SUPREME COURT, U. S.

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MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1174

AIR LINE DISPATCHERS' ASSOCIATION, ET AL.,
Petitioners,

v.

CIVIL AERONAUTICS BOARD, ET AL., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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March 1975

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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Petitioners,[1] Air Line Dispatchers' Association; Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Em-

[1] Respondents in this case are the Civil Aeronautics Board [hereinafter referred to as "CAB" or "Board"] and intervenors below, the Airline Industrial Relations Conference [hereinafter, "AIRCON" or "AIR Conference"], and its members Alaska Airlines, Inc.; Aloha Airlines, Inc.; American Airlines, Inc.; Continental Air Lines, Inc.; Eastern Air Lines, Inc.; The Flying Tiger Line, Inc.; Frontier Airlines, Inc.; Hawaiian Airlines, Inc.; Hughes Airwest; National Airlines, Inc.; North Central Airlines, Inc.; Northwest Airlines, Inc.; Ozark Air Lines, Inc.; Pan American World Airways, Inc.; Piedmont Airlines; Reeve Aleutian Airways, Inc.; Texas International Airlines, Inc.; Trans World Airlines, Inc.; United Air Lines, Inc.; Western Airlines, Inc.; and Wien Consolidated Airlines, Inc.

ployes; Flight Engineers' International Association; International Association of Machinists and Aerospace Workers; and Transport Workers Union of America, respectfully request that a writ of *certiorari* issue to review the judgment of the United States Court of Appeals for the District of Columbia entered in this proceeding on December 17, 1974.

OPINIONS BELOW

The opinions issued by the lower tribunals in this case are not reported but appear in the Appendix volume to this petition. The unreported *per curiam* judgment of the United States Court of Appeals issued in this case on December 17, 1974, appears at pages 1a-2a of the Appendix volume as Appendix A. That judgment affirmed Civil Aeronautics Board Order 73-6-96, decided June 22, 1973, which appears in the Appendix volume at pages 3a-8a, as Appendix B. Order No. 73-6-96 adopted and affirmed in large part the Initial Decision of the Administrative Law Judge issued in this case on December 1, 1972. That Initial Decision appears in the Appendix volume as Appendix C at pages 9a-87a. It approved with modifications the agreements establishing the "Airline Industrial Relations Conference." Appendix D, pages 89a-109a, is a copy of CAB Order 71-4-167, which deferred action on the agreements at issue and established a procedural schedule for their consideration. Order 71-11-23, issued November 3, 1971, Appendix E, pages 111a-13a, set this matter for a hearing, and Order 73-9-15, issued September 6, 1973, Appendix F, pages 115a-17a, concluded this matter before the Civil Aeronautics Board by approving the agreements as amended.

JURISDICTION

The judgment of the Court of Appeals was entered on December 17, 1974, and this petition for a writ of *certiorari* was filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether the CAB is empowered to authorize the airlines to engage in conduct which will alter materially the scheme for collective bargaining as designed and established by Congress for the air transport industry in the Railway Labor Act?

2. Whether the CAB has the authority to approve agreements among air carriers which effectively compel unions to engage in involuntary multi-employer bargaining?

3. Whether the combination of the Mutual Aid Pact and the AIR Conference agreements present an unlawful threat to the duty "to exert every reasonable effort to make and maintain agreements . . . ," as required by the Railway Labor Act?

STATUTORY PROVISIONS INVOLVED

Sections 1 Sixth, 2, 2 First to Fourth, and 201 of the Railway Labor Act (45 U.S.C. §§ 151 Sixth, 151a, 152 First-Fourth, and 181) and Sections 102, 204(a), 401 (k)(4) and 412 (b) of the Federal Aviation Act (49 U.S.C. §§ 1302, 1324(a), 1371(k)(4) and 1382(b)), are material to disposition of this petition and are reprinted as Appendix G, pages 119a-22a of the Appendix volume.

STATEMENT OF THE CASE

Concerned by what they considered to be an inherent imbalance in the Congressionally enacted scheme for collective bargaining, twelve airlines[2] banded together to form AIR Conference on March 17, 1971. The "imbalance" was caused, so the air carriers claimed, principally by the fact that the Railway Labor Act requires collective bargaining in the air transport industry to be conducted between crafts or classes of employees and their individual employers instead of between all employees and all employers on an industry-wide bargaining basis, and partly by the fact that the unions chosen by the employees are generally unions which are national in scope. (*See, e.g.*, J.A.E., 106, 133-34, 168-70.)[3]

AIRCON is the latest in a series of efforts by the air transport industry to eliminate the disadvantage at which it believes Congress placed it by the enactment of the Railway Labor Act and, to place itself in a securely dominant position in its collective bargaining relationship with the representatives of its em-

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[2] The air carriers filing the initial agreement were Alaska Airlines, Inc., American Airlines, Inc., Continental Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., North Central Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Piedmont Aviation, Inc., Trans World Airlines, Inc., United Airlines, Inc., and Western Air Lines, Inc. Following the filing of the original agreements with the Civil Aeronautics Board, additional air carriers joined AIRCON: Air West, Inc., Aloha Airlines, Inc., The Flying Tiger Line, Inc., Hawaiian Airlines, Inc., Ozark Air Lines, Inc., Reeve Aleutian Airways, Inc., Texas International Airlines, Inc., and Wien Consolidated Airlines, Inc.

[3] The separately paginated document, Exhibits to the Joint Appendix, is a one-volume item which was filed with the Court of Appeals and transmitted to this Court; it is referred to herein as "J.A.E."

ployees.[4] AIR Conference was designed to overcome the "craft or class representation" impediment to equal bargaining strengths by providing the carriers with a "united front" against the numerous unions they must face in negotiating contracts. To achieve this "united front," AIRCON would function as a clearing house for information as to the various positions taken by the unions throughout the industry and, more importantly, AIRCON would, upon carrier authorization, "act as the *exclusive* representative of member carriers in collective bargaining, mediation, arbitration and conciliation . . . ." Article IV(a), Articles of Association, Appendix D at page 102a (Emphasis added).

According to the AIRCON witnesses, craft or class representation, as sanctioned by the provisions of the Railway Labor Act, has been the crux of the air carriers' bargaining difficulties since it required them to negotiate separately with several different unions, each of which represented only a fraction of a particular carrier's total work force. And since each union has the ability to call for a strike, even though it might represent only a small portion of the carrier's employees, the dangers of disruption of service due to a strike were increased. J.A.E. 134, 148, 173. Further aggravating the carriers' problems, so they asserted, was their inability under our national labor policy to engage in multi-carrier bargaining without union acquiescence. Ac-

[4] The first major effort by the air transport industry was its creation of the Mutual Aid Pact in 1958. The Pact did not have its desired effect and the benefit of the Pact were continually increased until, in its most recently approved version, it provides the struck carrier with a profit during the strike. The Board's approval of the latest Mutual Aid Pact is the subject of a petition for a writ of *certiorari* now pending before this Court as No. 74-709.

cording to the carriers, many of the unions confronting them represented employees on numerous air carriers. Such unions could engage in so-called "whipsawing" tactics which were described by AIR Conference witnesses as the means by which an unreasonable gain extracted from one carrier is utilized as a justification for securing similar, or even more, unreasonable gains from other carriers. The labor union parties challenged the accuracy of AIRCON's contentions. Neither the Administrative Law Judge nor the Board confirmed AIRCON's contentions. Appendix C at pages 23a-24a.

By uniting behind one exclusive representative, the carriers hoped to undo the harm that they thought Congress had caused them. As Dr. Herbert Northrop, AIR Conference's expert witness explained:

> Beyond this [dissemination of general information and advice to airline negotiators], the extent to which AIR Conference can improve the overall position of the industry in collective bargaining will depend on the extent to which it succeeds in persuading the carriers to adopt a united front or a common strategy as to issues where they have a common interest. J.A.E. 496.

By adopting that "united front" and by standing firm behind that position, the carriers could prevent the unions from obtaining "excessive gains" from one carrier and building upon those "excessive gains" in negotiations with other carriers. J.A.E. 37-38.

As originally drafted and submitted to the Board for approval under Section 412 of the Federal Aviation Act, 49 U.S.C. § 1382, the AIR Conference Articles would have AIRCON police that "united front" through irrevocable powers of attorney, enforced by an almost unlimited damage provision. Articles II(b)

and X, Articles of Association, Appendix D at pages 99a-100a, 106a-107a. Those provisions, however, were removed from the agreements as finally approved since both the Administrative Law Judge and the Board found that, on its face, an irrevocable power of attorney, especially when coupled with the damages provision, would result in a breach of the duty to bargain in good faith. It was, they held, "designed to thwart the desire of the individual employer most intent on reaching agreement with his employees."[5] Appendix C at page 38a.

Once the irrevocable power of attorney and the provisions for damages for unauthorized revocation of that authority were removed, the Board found that the plan to make AIRCON the exclusive bargaining representative of the consenting carriers was consistent with both the national labor policy and the public interest. After the carriers submitted the required modifications, the CAB approved the agreements on September 9, 1973. Appendix F.

Several of the union parties, including Petitioners herein, petitioned the United States Court of Appeals for the District of Columbia Circuit, pursuant to Section 1006 of the Federal Aviation Act, 49 U.S.C. § 1486, for a review of the Board's decision of June 22, 1973, which had upheld those agreements and, on December 17, 1974, the Court of Appeals denied that review, affirming the Board's decision. Appendix A. This petition followed.

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[5] The Administrative Law Judge also found that the structure of AIRCON's board of directors was adverse to the public interest and, while the CAB upheld that finding, it modified the method of correcting the adverse aspects of the composition of AIRCON's board.

REASONS FOR GRANTING THE WRIT

I.

By Authorizing the Respondent Carriers To Employ AIR Conference as Their Exclusive Collective Bargaining Representative, Respondent CAB Has, in Effect, Sanctioned a Material Alteration of the Scheme for Collective Bargaining Designed and Established by Congress for the Air Transport Industry.

Unlike the National Labor Relations Act, which requires that employers and employees simply bargain in good faith, 29 U.S.C. § 158(d), the Railway Labor Act commands both parties "to exert every reasonable effort to make and maintain agreements . . . ." 45 U.S.C. § 152 First. As this Court has stated, the dictate of that Section is more than a mere statement of policy; it is, in fact, the heart of the Act. *Chicago & N.W. Ry.* v. *United Transportation Union,* 402 U.S. 570, 574 (1971). Because of the need "[t]o avoid any interruption to commerce or to the operation of any carrier engaged therein[,]" 45 U.S.C. § 151a(1), the Railway Labor Act extracts the higher obligation from those it covers "to exert every reasonable effort," rather than the National Labor Relations Act's mere duty to "confer in good faith." Moreover, in enacting the Railway Labor Act, Congress decided that the better way to achieve "agreements concerning rates of pay, rules, and working conditions" was to utilize craft or class bargaining rather than the "bargaining unit" scheme of the National Labor Relations Act. *Compare* 45 U.S.C. § 152 Fourth, *with,* 29 U.S.C. § 159(b).

In the case at bar, the carriers have specifically and emphatically expressed their dissatisfaction with the collective bargaining framework in which the Railway Labor Act requires them to operate (*e.g.,* J.A.E. 133-

34, 148-49; Appendix D at pages 94a-95a). They have designed AIRCON to mitigate the disadvantages which they see as stemming from that congressional scheme. Besides providing for a clearing house for collective bargaining information, a concept with which Petitioners do not quarrel, the carriers have established a procedure whereby a third party would act as the common exclusive bargaining representative for all. The only conceivable purpose for such a common bargaining representative is to provide all of the carriers who utilize AIRCON's services with a "united front" against the employees of all of the carriers. Indeed, as the carriers freely admit, that is a primary purpose of AIRCON. *E.g.*, J.A.E. 496.

While it is clear that carriers have the right to choose outside individuals or groups as their bargaining representatives, 45 U.S.C. § 151 Sixth, those representatives must have the interests of their particular carrier at heart, and not the goals of some third party, such as the uniform position of other carrier members of AIRCON. Moreover, deciding to take a uniform position and to stand firmly by it (*e.g.*, J.A.E. 37-38) is contrary to the express dictates of the Railway Labor Act "to exert every reasonable effort to make and maintain agreements," and on its face, evidences a desire to frustrate the entire purpose of negotiation—*i.e.*, compromise.

This clear threat to the congressionally designed scheme for air transport collective bargaining was apparent to the Board, but it chose to gloss over it by asserting that the CAB could not interfere with an employer's choice of a bargaining representative. Appendix C at pages 28a-34a, 75a. By thus determining that one provision of the Railway Labor Act—the free

choice of a bargaining representative—controlled all other provisions of that Act, the Board, and *a fortiori* the reviewing Court, failed to give proper weight to the dual statutory duties of both labor *and* management "to exert every reasonable effort to make and maintain agreements" and to bargain on a craft-by-craft and management-by-management basis. Because of this error, the Board and the lower Court in effect have authorized the carrier members of AIRCON to engage in collective bargaining conduct in contravention of the statutory framework established by the Railway Labor Act.

II.

By Approving the Creation of AIR Conference, Respondent CAB Has Empowered the Air Carriers To Utilize a System of Collective Bargaining Which Effectively Forces Individual Unions To Engage in Involuntary Multi-Carrier Bargaining.

The Railway Labor Act permits carrier and employee representatives to engage in multi-carrier bargaining, provided, the commitment by all to participate in such industry-wide bargaining is voluntary. Neither side can compel the other to engage in that form of collective bargaining. *Brotherhood of Railroad Trainmen* v. *Atlantic Coast Line R. R.*, 127 U.S. App. D.C. 298, 383 F.2d 225 (1967), *cert. denied*, 389 U.S. 1047 (1968). Involuntary multi-carrier bargaining is prohibited because, while oftentimes efficient, it contains the inherent danger that individual parties may have to sacrifice their individual interests for a common good or common goal.

During the hearings and in its brief to the Administrative Law Judge, AIRCON recognized that "multi-employer bargaining is a consensual matter under the law" (Appendix C at page 31a; J.A.E. 95-97). AIR

Conference contended that it did not at that time contemplate group carrier bargaining in the absence of consent by all carriers to have AIRCON act as exclusive bargaining agent and consent by the unions to group bargaining which was unlikely. J.A.E. 96-97. However, the founding carriers provided AIRCON with the machinery to achieve involuntary *de facto* multi-employer bargaining by providing for issuance of powers of attorney to AIR Conference making it the exclusive representative of all AIRCON members. Both the carriers' and AIR Conference's witnesses stated that a basic, primary purpose of AIR Conference was to provide a "united front" against the unions. *E.g.,* J.A.E. 496; *accord,* Agreement to Establish AIRCON, Appendix D at page 95a. By assuming a uniform position through a *common* representative, the member carriers will effect *de facto* multi-carrier bargaining contrary to the wishes of the unions. AIRCON will merely take the same position with each union on behalf of each carrier if AIRCON develops as its sponsors desire and the provisions of its Articles permit. (J.A.E. 22-24, 97, 496.)

The desire for a "united front", of necessity, would carry with it the concessions by carrier members of their individual interests to the "common good." Such sacrifice is inherent in multi-employer bargaining since the common front must be maintained lest one carrier break ranks and settle for more than AIRCON deems wise, thereby subjecting the faithful carriers to "whipsawing." J.A.E. 92-95. From the evidence adduced at the hearing, it is clear that with or without irrevocable powers of attorney, the airlines vigorously will attempt to remain united once they utilize the powers of attorney provided for in their AIRCON agreements. J.A.E. 19, 92-95, 156.

Moreover, by assuming a united stance the carriers can effectively compel the unions, for the survival of their own interests, also to assume a united stance. As Mr. R. Conrad Cooper, President of AIRCON, explained from his experience in the steel industry, a united stance by the employers can force the employees to follow suit. J.A.E. 83.

Fully aware of the pitfalls lurking in AIRCON's exclusive representation features, the Board chose to ignore those dangers by relying upon a past CAB case, *Airlines Negotiating Conference Case* [hereinafter, "ANC"], 8 C.A.B. 354 (1947), and upon decisions under the National Labor Relations Act, which the Board concluded gave employers under the Railway Labor Act the absolute right to determine the composition of their own bargaining committee. Appendix C at pages 28a-30a, 43a-46a. The Board failed or refused to recognize that AIRCON's avowed purpose of presenting a "united front" to all unions distinguished this case from the *ANC* case. The Board also failed to adhere to this Court's admonition that parallels between the Railway Labor Act and the National Labor Relations Act must be drawn with the "utmost care" and with a "full awareness of differences" in their statutory schemes.[6] Indeed, the Board erroneously sanctioned a course of conduct which will materially alter collective bargaining in the air transport industry and effectively will eliminate one of the differences in the statutory schemes deliberately designed and established by Congress—the "craft or class—individual employer" versus the "bargaining unit—multi-employer" concept of collective bargaining.

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[6] *Chicago & N. W. Ry.* v. *United Transportation Union, supra,* 402 U.S. at 579 n.11.

III.

By Approving Both the AIR Conference Agreements and the Latest Mutual Aid Pact, Respondent CAB Has Disrupted and Interfered with the Statutory Obligation 'To Exert Every Reasonable Effort To Make and Maintain Agreements".

A few months before the Board issued its decision in this case, but after the Administrative Law Judge had issued his Initial Decision herein, the Board on February 27, 1973, by a 3-2 vote, approved certain amendments to the Mutual Aid Agreement [hereinafter referred to as "Mutual Aid Pact"]. The Board in doing so, overruled the Administrative Law Judge who had heard the case and sanctioned an agreement which provides a member carrier with a profit during the course of a strike of its employees. See note 4, *supra.*

Nine of the ten carriers who were members of the Mutual Aid Pact in 1970 (CAB Order 70-11-110, at n.2), were among the twelve carriers who formed AIRCON (note 3, *supra*). AIRCON provides the carriers with a united front against the unions, and the Mutual Aid Pact provides them with a shield, not only to withstand the threat of strike, but also to endure a strike at a profit.

As the Administrative Law Judge stated in his Initial Decision in the case at bar:

> [T]he relative economic power of the two sides rests, on the one hand, on the ability of the employees to back up their demands with an effective strike and, on the other, of the air carrier to refuse to yield and withstand a strike and enforce also, as an alternative, a lockout of its employees. Appendix C at page 60a.

Clearly, Congress intended both sides to have economic sanctions available to help enforce their demands, but under the scheme of the Railway Labor Act, the use of economic weapons is limited by the Act's purpose of "avoid[ing] any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof." 45 U.S.C. § 152 First; *see also,* 45 U.S.C. § 153-60. It was for this purpose that Congress exacted that higher duty of carriers and employees "to exert every reasonable effort to make and maintain agreements." 45 U.S.C. § 152 First.

By allowing airlines to participate in both AIRCON and the Mutual Aid Pact, the CAB has completely revised labor relations in the air transport industry. Once the carriers unite behind the exclusive representation of AIRCON, they can with impunity refuse to compromise, for if a strike should be called for by the unions, Mutual Aid would allow the struck carriers to operate at a profit until the union and those they represent were no longer financially able to maintain a strike and were compelled to capitulate to the carriers' "united front" demands. And, if the unions should call for a strike of the entire industry, Congress undoubtedly would act, as it has so often in railroad industry strikes, to prevent continuation of such a strike.

The effects of AIRCON, therefore, when combined with those of the Mutual Aid Pact, nullify that stringent duty mandated by Congress to all parties subject to the Railway Labor Act "to exert every reasonable effort" to reach agreements. The AIRCON and Mutual Aid Pact agreements, when considered in the light of their collective effects, thus clearly contravene

the National Labor Policy. By concluding otherwise, the Board has chosen to ignore the effects of its decisions.

CONCLUSION

For these reasons, a writ of *certiorari* should issue to review the judgment of the United States Court of Appeals for the District of Columbia circuit.

Respectfully submitted,

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March 1975



SUPREME COURT, U. S.
MAR 17
MICHAEL RODAK,

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1174

AIR LINE DISPATCHERS' ASSOCIATION, ET AL., *Petitioners,*

v.

CIVIL AERONAUTICS BOARD, ET AL., *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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March 1975

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APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

APPENDIX A

Judgment of the United States Court of Appeals for the District of Columbia Circuit of December 17, 1974

Appendix A

Judgment of the United States Court of Appeals for the District of Columbia Circuit of December 17, 1974

[Filed Dec. 17, 1974]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
September Term, 1974

[No Opinion]

No. 73-1758

AIR LINE DISPATCHERS' ASSOCIATION, ET AL., *Petitioners*

v.

CIVIL AERONAUTICS BOARD, *Respondent*
THE AIRLINES INDUSTRIAL RELATIONS CONFERENCE AND ITS MEMBER CARRIERS, *Intervenor*

No. 73-1759

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, *Petitioner*
CIVIL AERONAUTICS BOARD, *Respondent*

v.

THE AIRLINES INDUSTRIAL RELATIONS CONFERENCE AND ITS MEMBER CARRIERS, *Intervenor*

Petitions for Review of an Order of the Civil Aeronautics Board.

Before: MOORE,* Senior Circuit Judge, and WRIGHT and ROBB, Circuit Judges.

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* Of the Second Circuit, sitting by designation pursuant to 28 U.S.C. § 294(d).

JUDGMENT

These causes came or to be heard on petitions for review of an order of the Civil Aeronautics Board and were argued by counsel. While the issue presented occasion on need for an opinion, they have been accorded full consideration by the court. *See* Local Rule 13(c).

The factual findings of the Board are supported by substantial evidence in the record taken as a whole, and the Board's conclusions are free from reversible legal error. *See Universal Camera Corp.* v. *NLRB*, 340, U.S. 474 (1951). We note that, in approving the AIR Conference agreements (CAB 22367 and CAB 22368), subject to modifications and conditions, the Board stated: "On the other hand, the Board has a continuing responsibility under section 412 [49 U.S.C. § 1382 (1970)] to insure that a carrier association approved by it is not operating in a manner violative of the Act or adverse to the public interest." We read this statement by the Board as a recognition of its responsibility of continuing oversight of the activities of the AIR Conference to make certain that it operates within the law and in the public interest, and to act promptly in the event it does not.

On consideration of the foregoing, it is ORDERED and ADJUDGED by this court that the order of the Civil Aeronautics Board sought to be reviewed in these proceeding is hereby affirmed.

Per Curiam
For the Court
[s] HUGH E. KLINE
Hugh E. Kline
Clerk

APPENDIX B

CAB Order 75-6-88 decided June 22, 1975

Appendix B

CAB Order 73-6-96 decided June 22, 1973

Airline Industrial Relations Conference Investigation Order 73-6-96

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 23267

Agreements C.A.B. 22367 and 22368

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 22nd day of June, 1973

ORDER

On December 1, 1972, Administrative Law Judge Milton H. Shapiro issued his initial decision in the above case. He found that the Airline Industrial Relations Conference ("AIR Conference") agreements are not adverse to the public interest or in violation of the Federal Aviation Act if modified to (1) exclude all provisions prohibiting revocation of a power of attorney granted by a member carrier to the Conference for collective bargaining purposes, (2) exclude all provisions for damages for an unauthorized withdrawal from the Conference or for otherwise causing a breach or termination of such a power of attorney, and (3) replace the tiered system of representation on the Board of Directors of the Conference by a system granting each member carrier an equal voice on the Board. Petitions for discretionary review and answers

thereto were filed.[1] By Order 73-4-28 the Board granted the petitions for review and ordered the issues on review to be the same as those in the proceeding before the ALJ. Briefs to the Board have been filed,[2] and oral argument held before the Board on June 13, 1973.

Upon consideration of the record and the contentions of the parties, the Board hereby adopts as its own the reasoning, findings and conclusions of the Administrative Law Judge as expressed in the initial decision in this case[3] except to the extent inconsistent with this order.

In disapproving the provisions of the agreement relating to the use of irrevocable powers of attorney we note that multi-employer bargaining has not been a pattern of the air transportation industry and consequently that the facts developed in this case do not present the question of the extent to which such powers of attorney might or might not be appropriate in a case in which the carriers and unions have entered into a multi-employer bargaining situation. Since no such situation is present here, we do not undertake to judge what the law or the public interest might require under such circumstances.

We agree with the Administrative Law Judge, for the reasons stated in his initial decision, that the tiered system

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[1] Petitions for discretionary review were filed by AIR Conference, Air Line Pilots Association International (ALPA), "Five Union Parties" (Air Line Dispatchers Ass'n., BRAC, FEIA, IAMAW and TWU), International Brotherhood of Teamsters (IBT) and Allied Pilots Association. Answers were filed by AIR Conference, Five Union Parties, ALPA and BOR.

[2] Briefs have been filed by AIR Conference, ALPA, Allied Pilots Association and Aircraft Mechanics Fraternal Association jointly ("APA/AMFA"), Five Union Parties, and IBT. BOR adopts its brief to the ALJ as its brief to the Board.

[3] The Administrative Law Judge's initial decision is attached hereto as an appendix.

of representation contemplated by the agreements would be adverse to the public interest. However, the requirement that each member be individually represented on the Board of Directors would result in a Board of unwieldy size and would appear unnecessary in order to protect the interests of the various members, their employees, and the public. Similar questions of carrier representation have previously arisen in connection with Board consideration of the activities and practices of the Air Transport Association ("ATA"). Thus, in Order E-19260 (adopted January 31, 1963) we conditioned our approval of the ATA agreements to require equal voting for all members, and to require that each of the various classes of members be represented on the ATA Board of Directors unless all the members of any class elect not to be represented on the Board of Directors for any particular year. We shall adopt that approach here.

We have noted AIR Conference's argument that the visitation condition imposed by the Administrative Law Judge would deprive it of the confidentiality necessary for collective bargaining and would discourage carriers from utilizing the Conference. On the other hand, the Board has a continuing responsibility under section 412 to insure that a carrier association approved by it is not operating in a manner violative of the Act or adverse to the public interest. In an effort to reconcile these two competing considerations, we have determined to confirm the right of visitation as a condition to our approval of the agreements; however, as a matter of discretion, the Board will not exercise this right as to matters of carrier bargaining strategy directly affecting pending negotiations. AIR Conference activities relating to any particular pending negotiations will, of course, be fully subject to the right of visitation following the conclusion of such negotiations.

Airline Industrial Relations Conference Investigation
Order 73-6-96

ACCORDINGLY, IT IS ORDERED THAT:

1. Agreements CAB 22367 and 22368, hereinafter referred to as "agreements", be and they hereby are approved, subject to the following modifications and conditions:

a. Not later than 30 days after the effective date of this order as the order of the Board, there shall be filed with the Board amendments to the agreements conforming with the following required modifications:

1. All provisions which prohibit revocation in whole or in part of a power of attorney granted by a member carrier to AIR Conference to conduct collective bargaining on its behalf, including related provisions for suspension or withdrawal of membership, assessment of damages, or other sanctions against such revocation, shall be eliminated;

2. All provisions for assessment of damages against a member carrier for "an unauthorized withdrawal from the Conference" as defined in the agreements, or for otherwise causing a breach or termination of a power of attorney granted by a member carrier to AIR Conference to conduct collective bargaining on its behalf shall be eliminated;

3. The provisions for a tiered system of representation of member carriers on the Board of Directors of AIR Conference whereby each trunkline and Pan American Airways is represented on the Board by its chief executive, or his designee, while all other member carriers com-

bined are permitted up to three representatives on the Board, are to be replaced by provisions for a system whereby (1) each member carrier of AIR Conference shall have an equal vote in selecting the Board of Directors; and (2) each of the classes of AIR Conference members shall be represented on the AIR Conference Board of Directors, unless all the members of any class elect not to be represented on the Board of Directors for any particular year.

b. The approval of the agreements shall not be deemed a determination as to the reasonableness of the financial provisions thereof for future ratemaking or other regulatory provisions under the Act.

c. The approval shall not affect the rights and obligations of the parties, or of their employees, under the Railway Labor Act.

d. Copies of all powers of attorney granted pursuant to the provisions of the Articles of Association (Agreement CAB 22368) shall be filed with the Board's Docket Section and the Director, Bureau of Operating Rights, within five days after the grant thereof, and, except for powers of attorney granted by member carriers to AIR Conference to conduct collective bargaining on their behalf, no such power of attorney shall take effect until twenty days thereafter.

e. The air carrier members of AIR Conference shall file with the Board within 15 days of adoption, a copy of detailed procedures adopted for handling the arbitration of matters made subject to arbitration.

f. The air carrier members of AIR Conference shall file with the Board within 30 days of preparation copies of written opinions and reports or actions of the Board of Directors and Advisory Board, or decisions of arbitrators which result in a refusal of membership, the expulsion of a member, or other disciplinary action.

g. AIR Conference and its air carrier members agree that the Board and its authorized agents shall have access to and authority to inspect all accounts, records, and memoranda, including all documents, papers, and correspondence belonging to or in possession of AIR Conference; *provided, however*, that the Board shall not have access to and authority to inspect materials which are in fact legally privileged against disclosure by reason of an attorney-client privilege which AIR Conference (or, as to documents heretofore created, a member of AIR Conference) is entitled to assert.

h. Jurisdiction in this proceeding be and it hereby is retained for the purpose of imposing such further conditions as the Board may from time to time find to be required in the public interest.

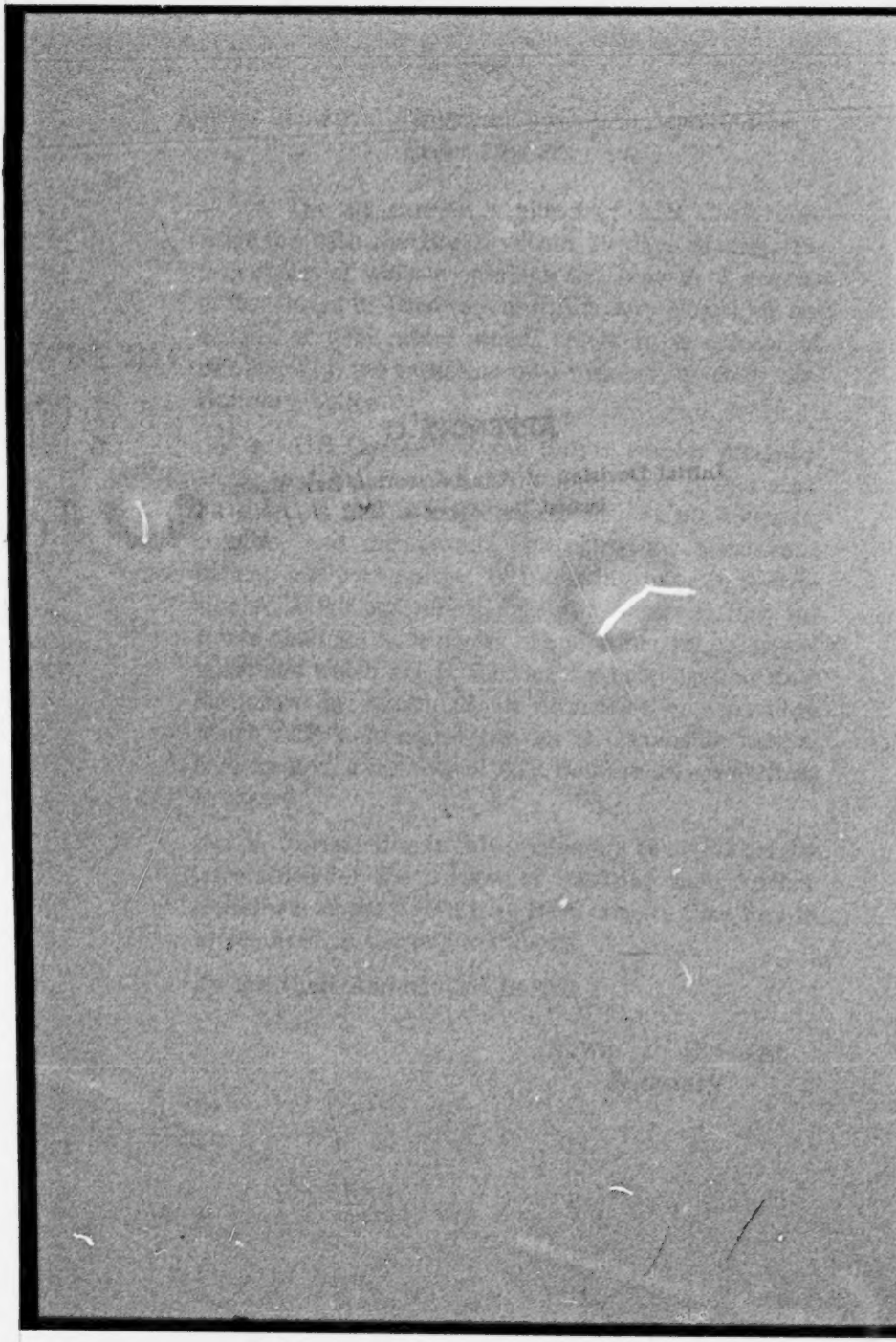
By the Civil Aeronautics Board:

EDWIN Z. HOLLAND
Secretary

(SEAL)

APPENDIX C

Initial Decision of Administrative Law Judge
issued December 1, 1972



Appendix C

Airline Industrial Relations Conference Investigation
Initial Decision of Milton H. Shapiro,
Administrative Law Judge

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Docket 23267

Served: December 1, 1972

The AIR Conference agreements are found not adverse to the public interest or in violation of the Federal Aviation Act of 1958, as amended, if modified to (1) exclude all provisions prohibiting revocation of a power of attorney granted by a member carrier to the Conference for collective bargaining purposes, (2) exclude all provisions for damages for an unauthorized withdrawal from the Conference or for otherwise causing a breach or termination of such a power of attorney, and (3) replace the tiered system of representation on the Board of Directors of the Conference by a system granting each member carrier an equal voice on the Board.

Amendments of the agreements making the required modifications shall be filed not later than 30 days after the effective date of this decision.

Contingent on the filing of the said amendments, the AIR Conference agreements are approved subject to conditions.

Appearances:

Charles A. Miller and *Russell H. Carpenter* for the Airline Industrial Relations Conference and its members.

William G. Mahoney for the Air Line Dispatchers Association, the Brotherhood of Railway and Airline Clerks, the

The above requests for postponement of the start of the hearing are hereby denied. The parties will recall that on April 7, 1972, at the request of ALPA, joined in by other union parties and by the AIR Conference, and without objection by any of the other parties, the hearing was postponed for three weeks. In granting this postponement of the hearing to June 6, 1972, the examiner advised the parties that because of the Board's direction that the hearing be expedited, they were then being put on notice that the June 6 hearing date would be treated as firm. The AIR Conference has repeatedly advised the examiner and the other parties that it is prepared to go forward with its witnesses on the scheduled hearing date. No party has indicated that it would be unable to proceed with the hearing of the AIR Conference case on June 6, 1972. Under the circumstances, no postponement is warranted.

Recognizing that the failure of the union parties to comply with the ground rules of the case may, in fact, necessitate a break in the hearing, it would be premature, however, to rule before the start of the hearing on the AIR Conference request for a recess after the presentation of its own and the APA and AMFA direct cases. Whether such a recess will actually be necessary, and if so, for how long, are matters which will depend to a large extent on the progress and development of the hearing and on future compliance of the union parties with the ground rules and rulings of the examiner.

Finally, the examiner hereby directs all parties to supply by June 12, 1972, any information sought by other parties in their Information Requests approved at the prehearing conference which they have not already provided.

/s/ MILTON H. SHAPIRO
Milton H. Shapiro
Hearing Examiner

June 5, 1972

International Association of Machinists and Aerospace Workers, the Transport Workers Union of America and the Flight Engineers' International Association.

Henry Weiss, Robert S. Savelson and *Stephen B. Moldof* for the Air Line Pilots Association, International.

Martin Seham, Daniel Freeman and *Fred Klein* for the Allied Pilots Association and the Aircraft Mechanics Fraternal Association.

Angelo V. Arcadipane and *Herbert A. Levy* for the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Neil G. McBride for the Aviation Consumer Action Project.

Joel H. Fisher and *Marshall Sinick* for Seaboard World Airlines, Inc. under Rule 14 of the Board's Rules of Practice.

Alexander N. Argerakis for the Bureau of Operating Rights.

INITIAL DECISION OF MILTON H. SHAPIRO, ADMINISTRATIVE LAW JUDGE

Statement of the Proceeding

This case stems from the efforts of a group of scheduled air lines to coordinate the labor relations and collective bargaining of all scheduled U. S. air carriers, and the opposition to those efforts of various types of unions representing air-line employees.

On April 6, 1971, twelve scheduled air lines[1] filed an agreement (CAB 22367) pursuant to section 412 of the Federal Aviation Act of 1958, as amended, (Act) entitled "Agreement to Establish the Airline Industrial Relations Conference" (AIR Conference) and a second agreement (CAB 22368) which constitutes the Articles of Association of AIR Conference. These agreements are intended to remain in effect until December 31, 1975, and thereafter from year to year subject to withdrawal provisions as specified in the Articles of Association. By Order 71-4-167, April 26, 1971, the Board deferred action on the agreements and directed that the air carrier parties to the agreements file detailed comments justifying approval, and that other interested persons have an opportunity to file answers thereto.

The Board by Order 71-11-23, November 3, 1971, set this matter down for hearing following opposition to the agree-

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[1] Alaska Airlines, Inc., American Airlines, Inc., Continental Airlines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., North Central Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Piedmont Aviation, Inc., Trans World Airlines, Inc., United Air Lines, Inc. and Western Air Lines, Inc.

In addition to the foregoing original signatories to the agreement the membership of the Conference currently includes Air West, Inc., Aloha Airlines, Inc., The Flying Tiger Line, Inc., Hawaiian Air Lines, Inc., Ozark Air Lines, Inc., Reeve Aleutian Airways, Inc., Texas International Airlines, Inc. and Wien Consolidated Airlines, Inc.

ments by a number of unions and requests by several of them for a hearing. The Board's order also made the unions which had filed comments in opposition to the agreements,[2] AIR Conference, and each of its members, and the Departments of Justice, Labor and Transportation parties to this proceeding.

The Aviation Consumer Action Project (ACAP) sought and was granted leave to intervene.

After notice, a hearing was held and briefs were filed by AIR Conference, ALPA, APA and AMFA jointly,[3] BOR, the Five Union Parties (Five Unions) and IBT.[4] With the

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[2] Air Line Employees Association (ALEA); the Air Line Pilots Association (ALPA); the Allied Pilots Association (APA); the Aircraft Mechanics Fraternal Association (AMFA); the following unions, which have joined herein as the Five Union Parties: Air Line Dispatchers Association (ALDA), Brotherhood of Railway and Airline Clerks (BRAC), Flight Engineers International Association (FEIA), International Association of Machinists and Aerospace Workers (IAM), Transport Workers Union of America (TWU); and the International Brotherhood of Teamsters (IBT).

[3] Both are referred to hereinafter as APA.

[4] The IBT brief asks the Administrative Law Judge to reconsider his ruling in the notice to the parties dated June 5, 1972, in which he denied the IBT motion to defer these proceedings pending the final determination of the IBT complaint for enforcement filed with the Board in Docket 24499 against AIR Conference for alleged violations of sections 408 and 409 of the Act.

Pursuant to IBT's request the ruling of June 5, 1972, has been reconsidered, and upon such reconsideration it is hereby affirmed. As an association of carriers established to deal with air-line collective bargaining problems AIR Conference is not "a person engaged in any phase of aeronautics" within the meaning of sections 408 and 409 of the Act. The governing ruling of the Board in the *Airlines Negotiating Conference* (*ANC*) case, 8 C.A.B. 354 (1947), on whether such an Association is subject to sections 408 and 409 of the Act was in no way modified by the Board's orders in the *Airline Tariff Publishers* (*ATP*) case, 41 C.A.B. 726 (1964), or the *Consolidated Airline Purchasing Corporation* (*CAPCO*) case, 40 C.A.B. 986 (1964), as contended by IBT. The latter proceedings did not involve organizations engaged in labor related activities, and made no reference whatever to the *ANC* case. They dealt with corporations owned by a

exception of BOR and IBT, the same parties also filed reply briefs.

THE ISSUES

The primary issues are whether the agreements under consideration should be approved pursuant to section 412 of the Act as not adverse to the public interest or in violation of the Act, and if so, what conditions, if any, should be imposed on approval. In addition, the Board in its order instituting this investigation (Order 71-11-23, November 3, 1971) specified that the following issues, among others, are relevant in determining whether the agreements are consistent with the public interest and do not violate any provision of the Act:

1. Do the agreements by themselves, or in conjunction with the operation of the Mutual Aid Pact, violate any applicable provisions of the Railway Labor Act?

2. Will the operation of the agreements improve or impair labor-management relations in the industry?

3. Will the agreements discriminate in restraint of trade against certificated carriers not party to the agreements, or in any way violate anti-trust laws?[5]

4. What effect, if any, will the agreements have upon the bargaining balance between labor and management?

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number of carriers which were engaged in commercial aspects of the air-line business. ATP was concerned with the preparation and publication of tariffs, while CAPCO was concerned with the purchase of equipment and supplies.

In view of the foregoing, there is no reason to revise the previous ruling that AIR Conference is not a person engaged in a phase of aeronautics and that no questions of control and interlocking relationships are raised within the meaning of sections 408 and 409 of the Act.

[5] As an issue relevant to this question, is the present tiered system of representation on the Board of Directors (one director for each trunk and Pan American, and up to three directors for all other certificated carriers combined) in the public interest?

Initial Decision of Milton H. Shapiro, Administrative Law Judge

5. What are the implications and effects of Phase II of the Wage-Price Freeze as it pertains to these agreements?

At the instance of ACAP, the following was also included as an issue: What will be the effect of the agreements on the productivity and efficiency of labor?

THE NATURE OF THE AGREEMENTS

According to the preamble to the agreement to establish AIR Conference it was formed because the parties and other air lines have been subjected to and are threatened with extreme and unreasonable demands by representatives of certain of the classes and crafts of their employees; the competing interests and rivalries between certain of the employee collective bargaining representatives and between different locals of single international unions have made spiraling demands on the carriers in successive negotiations; the multi-carrier representation of some of the unions is used to formulate bargaining strategies resulting in excessive costs to the carriers; it is in the carriers' and the public interest that the air carriers cooperate in handling labor relations and collective bargaining matters; and because the labor-related costs of providing air transportation should be kept commensurate with the reasonable cost to the public of receiving such services.

Any certificated scheduled United States air carrier is eligible to become a member of AIR Conference[6], which is an unincorporated voluntary association. Membership may be terminated by a carrier at the end of any calendar year after giving not less than 90 days' notice. A member which has given AIR Conference a power of attorney to represent it in collective bargaining negotiations which have begun may not revoke the power until those negotiations have

[6] At the time the agreements were filed, 39 carriers were eligible.

ended, whether or not the member has given a withdrawal notice. If a carrier has given a withdrawal notice, it will not be effective until ninety days after the negotiations are completed.

Subject to the provisions of the bylaws and powers of attorney executed by member carriers, AIR Conference will act as the exclusive representative of members in collective bargaining, mediation, arbitration and conciliation with labor organizations specified by each member.

AIR Conference is governed by a Board of Directors composed of the chief executive officer of each of the trunk carriers and Pan American, or his designee, and the chief executives of up to three other carriers from the regional, local, territorial and all-cargo groups. In addition, provision has been made for an Advisory Board consisting of the chief industrial relations officer of each member carrier having its chief executive officer or his designee on the Board of Directors. The Advisory Board is to carry out the policies and objectives of the Conference as established by the Board of Directors. The president of the Conference, who is to be selected by a two-thirds majority vote of the Board of Directors, is Chairman of both the Board of Directors and the Advisory Board. All actions of the Board of Directors and the Advisory Board require a two-thirds affirmative vote of the members, and, except in certain limited situations, the president has an unrestricted proxy to vote for each member not present.

The Advisory Board, with the approval of the Board of Directors, determines the operating budget. The general expenses of the AIR Conference are borne by members on the basis of the ratio of each carrier's operating revenues to the total operating revenues of all member carriers in the year prior to the assessment.

Initial Decision of Milton H. Shapiro, Administrative Law Judge

The specific objects and purposes of AIR Conference are planning and recommending a program to all member carriers for promoting a more consistent position on issues in labor negotiations involving such carriers; collecting and distributing information regarding industrial relations matters and providing a forum for the discussion of such matters for all members, and at fees for eligible carriers which do not become members; determining the position of the member carriers on legislation involving labor relations and implementing such determinations in cooperation with the AIR Transport Association; furnishing general labor law research; representing members before courts, administrative agencies, and boards as authorized by the Advisory Board; with the approval of a two-thirds majority vote of the Board of Directors, representing one or more member carriers in labor relations matters upon authorization by the carrier through a written power of attorney which will be revocable at a meeting of the Board, except for powers of attorney involving labor negotiations; and advising and consulting with the member carriers in order to promote uniformly good employee relations and minimize grievances.

Any member of the association becomes liable to other members for damages if it withdraws from it except as provided by the Articles, or if it enters into any "unauthorized agreement", or breaches or terminates a power of attorney in violation of the Articles. The Articles define "an unauthorized agreement" as any agreement or understanding negotiated by a member carrier on its behalf or any modification thereof, negotiated or voluntarily agreed to in any manner except in accordance with the power of attorney granted by the member to the AIR Conference.

Besides the agreement to form the AIR Conference and the Articles of Association, the members of AIR Conference have adopted bylaws for the conduct of its affairs. Pursuant to the bylaws the officers of AIR Conference are elected

by the Board of Directors and consist of the President, an Executive Vice-President, a Secretary-Treasurer and such other officers as may be designated by the Board. All the officers are to be full-time employees of AIR Conference.

Most of the efforts of AIR Conference during its first year of operation have been devoted to the Wage-Price Stabilization Program. It has also advised member carriers on their collective bargaining problems and furnished information services, but as of the conclusion of the hearing had not been authorized to act or acted for any carrier as a bargaining agent.

Positions of the Parties

AIR Conference:

The Board is required by section 412 of the Act to approve the instant agreements unless they are adverse to the public interest or in violation of the Railway Labor Act, as incorporated in the Federal Aviation Act. The agreements do not violate the Railway Labor Act but, as instruments of employer self-organization for bargaining, are affirmatively sanctioned by the national labor policy. That affirmative sanction is the controlling consideration in the Board's public interest determination in the absence of compelling transportation considerations to the contrary.

The issues as to the impact of these agreements on the Railway Labor Act and as to whether they are adverse to the public interest were resolved by the Board in the *ANC* case, *supra*, which approved the agreements establishing the ANC, an industry collective bargaining organization with similar powers and purposes to those of AIR Conference. The decision in that case requires approval of the agreements under consideration here.

Initial Decision of Milton H. Shapiro, Administrative Law Judge

AIR Conference is far from being new and revolutionary. What the air lines are attempting to do through it is no more than what other transportation companies in the railroad, shipping and trucking industries have been doing through their associations for years.

The generous settlements the air-line unions have consistently won, which have kept their members ahead of all other American workers, graphically illustrate the need of the air line for help in collective bargaining. They also prove the heavy imbalance of bargaining power favoring the unions in this industry.

The members of AIR Conference are unanimous that their interests will be served by pursuing coordinated rather than independent courses of action. Such coordination is clearly in the public interest, not only in reducing the likelihood of service disruptions and making air transportation more economical for the public, but also in helping to arrest inflation in the national economy.

The Unions in General:

The agreements are structured to impose industry-wide bargaining on the unions without their consent. This approach violates the Railway Labor Act and the Federal Aviation Act and prevents compliance with the obligation to bargain in good faith.

The agreements also violate the anti-trust laws. They provide a means by which the few large carriers can control the collective bargaining of all other carriers by requiring the latter to surrender their freedom of action in negotiations.

The structure of the Board of Directors of AIR Conference providing for one director for each trunk and Pan American and up to three directors for all the other certifi-

cated carriers combined is clearly against the public interest. This creates a situation in which the trunk carriers may dictate the AIR Conference position on issues which are of special concern to local service or regional carriers and their employees.

There has been no evidence in the record to demonstrate any bargaining imbalance. Despite AIR Conference claims, union whipsawing and inter-union coordination have not been proven.

If AIR Conference achieves its objective of a united front of air carriers which permits no carrier to break ranks, major confrontations will occur which will force the unions to coordinate their efforts and will result in either selective or nationwide strikes.

The agreements will adversely affect the productivity and efficiency of labor because of the increased possibility of strikes of greater duration and breadth.

Removing the irrevocable nature of the power of attorney provisions from the agreements will not correct the basic defects, nor will approval of the agreements without any power of attorney to conduct negotiations. As an unneeded and undesirable intrusion into air-line labor relations the AIR Conference agreements should be disapproved.

Additional Individual Union Positions:

ALPA:

The carriers have established an organization which is unique in American industry. It has attempted to introduce radical changes in labor relations in the air-line industry which ignore the relative distinctions between individual carriers, as well as the needs and desires of their employees. It has provided a way to divest individual

carriers of control of collective bargaining in violation of law and the public interest.

APA:

If the Board should approve AIR Conference and its power to bargain for air carriers, it should prohibit AIR Conference from being designated the bargaining agent for negotiations with unions primarily identified with individual carriers. AIR Conference has not demonstrated that the purported justifications for the association apply to APA in its dealings with American Airlines or to AMFA in its dealings with Ozark Airlines and Air West.

Neither the Board, nor any other agency, has been granted authority to rectify the purported imbalance in collective bargaining relationships. By admitting that the purported imbalance in bargaining power of the airline industry results from the structure of collective bargaining in the industry, the carriers are really not complaining about the actions of the unions but about the system of collective bargaining ordained by Congress in the Railway Labor Act. Only Congress may alter the structure of collective bargaining under the Railway Labor Act.

AIR Conference should be disapproved, but if approved, it should be with the specific proviso that it not be empowered to bargain through a power of attorney for any carrier in any situation where the union involved objects.

Five Unions:

The agreements violate section 2, First, of the Railway Labor Act in that they permit a member carrier to turn over the negotiation of a collective bargaining agreement to AIR Conference, thus precluding itself from either revoking that authorization or making its own agreement without the risk of damages. This would constitute aban-

donment of its responsibility under that section to bargain in good faith.

The agreements should be disapproved, but if approved, only on condition that the association shall not bargain or represent its members through powers of attorney for any purpose, and shall not be permitted to coordinate bargaining positions among air lines in order to maintain a united front which would necessarily impair labor relations in this industry.

IBT:

Labor and management in the air-line industry have developed attitudes and habits which regularly lead them to peaceful settlement of collective bargaining issues. Therefore, it seems irresponsible to propose that these successful relationships should now be discarded in favor of a new and untried scheme.

The Board cannot grant the authority sought by AIR Conference without aligning the United States with the collective bargaining objectives of management and against air-line employees. This role has been consistently avoided by the government.

Challenges to the Pay Board made by AIR Conference with respect to eight Category III units on six air lines, if successful, would partially nullify existing collective bargaining agreements. These challenges were a clear divergence from the national labor policy compelling carriers to maintain agreements.

BOR:

Excluding the provisions for the grant of an irrevocable power of attorney to engage in collective bargaining, there are no functions of AIR Conference adverse to the public interest. Nothing in the AIR Conference agreements is

intended to create labor turmoil, encourage strikes or cause member carriers to ignore their statutory mandate and the national labor policy by refusing to bargain collectively and in good faith. Approval of AIR Conference will be consistent with Board and legal precedent if the provisions regarding the irrevocable power of attorney to engage in collective bargaining and damages for termination of such a power are eliminated.

AIR Conference may be useful to answer the pressing need for effective measures to control air-line labor costs. It may facilitate employer cooperation and coordination in an industry characterized by class and craft bargaining which requires individual carriers to negotiate with a number of unions.

Because AIR Conference members must deal with large national unions which exercise a high degree of centralized control over collective bargaining strategy, they have to seek industry coordination in labor matters.

The Need For Air Conference

Much of this record reflects the efforts of AIR Conference to demonstrate an urgent need for the formation of the association as a response to various economic, financial and labor relations problems of the air lines which it alleges are union generated. Predictably, much of the rest of the record is filled with the unions' rebuttal to these claims. While relevant, the reasons for the organization of AIR Conference are not in themselves material to the disposition of the issues, nor is the outcome of the controversy between AIR Conference and the unions as to whether, and to what extent, it has proved a need for the association. Since the ultimate issues are whether the AIR Conference agreements will be adverse to the public interest or violate the Railway

Labor Act or the Federal Aviation Act, the focal considerations are the objectives, structure, probable operation, and impact of Air Conference. Accordingly, no findings are made herein as to whether AIR Conference has established the validity of its allegations concerning the need for the association. Still, to understand and evaluate these matters according to the criteria of the Act, a brief review of the AIR Conference statement of the need for the organization is required.

According to AIR Conference, that need and its own role must be viewed from the perspective of the history and structure of collective bargaining in the air-line industry. Thus, it contends that the unions have excelled in their ability to secure improvements in wages and benefits for their air-line members; and that they have been able to achieve their gains through aggressive bargaining and by willingness to use their strike power to obtain settlements in excess of those considered fair and reasonable under "official and neutral standards." It also claims that, apart from the impediments to the carriers' ability to bargain resulting from the provisions of the Railway Labor Act, and the bargaining disadvantage of transportation employers, the carriers have not made effective use of whatever bargaining resources they do have.

AIR Conference characterizes labor relations in the air-line industry since World War II as frequently turbulent because of strikes over exceptionally large demands and the intense rivalry among unions. It recalls that the first Presidential Board convened in an air-line dispute resulted from pay demands by ALPA for pilots flying four-engine aircraft. Since that Board was formed in 1946, it points out that a score more have been appointed in air-line disputes, and that the strike has been a common negotiating tactic of

air transport unions. The association credits a strike by IAM against Capital Airlines in 1958, one of a number by IAM that year, as causing the formation of the Mutual Aid Pact.

AIR Conference alleges that since 1966, the year of the strike against five trunk carriers by the IAM, there has been an inflationary spiral in the air-line industry contemporaneous with "the less severe spiral" in the national economy which led ultimately to the 1971 economic stabilization program and Phase II controls. In addition, it complains that since 1966 air-line labor relations have been marked by a substantial increase in jurisdictional disputes and raiding by the unions, and by strikes by both the raiding unions and the threatened incumbents.

The air lines are also dissatisfied with the structure of bargaining in their industry, which they attribute to the Railway Labor Act. They say that, by providing for union representation by class or craft, the Act leads to dividing a carrier's staff into as many as a dozen parts for representation purposes, generally with a different union representing each part. Therefore, instead of engaging in system-wide or company-wide bargaining, the air lines are constantly in negotiation with one union or another and are constantly in danger of being struck.

This pattern of bargaining in the air-line industry is contrasted by AIR Conference with the long-standing railroad industry practice of industry-wide multi-employer bargaining on major national issues between an employer association and a group of unions. It refers also to the practice of regional multi-employer bargaining in the maritime and trucking industries.

Initial Decision of Milton H. Shapiro, Administrative Law Judge

AIR Conference also justifies its formation as a defense against the allegedly strong centralized control exercised by industry-wide unions over their local units bargaining with individual carriers. The central unions are said to participate directly in negotiations with the individual carriers and either make or dominate critical bargaining decisions. One example it cites of how a union coordinates its bargaining strategy is the technique described in the ALPA Negotiator's Handbook of seeking different concessions on different air lines so that the various concessions may later be incorporated into one agreement containing all of the union's original objectives. This is supposed to be done by the negotiator's insisting that all carriers match any concession granted by any one carrier in order to eliminate "inequity". It also points to the language of the Handbook which describes this as a technique of "playing off one air line against another" or "whipsawing".

Besides these claims about intra-union coordination, AIR Conference also believes the unions enjoy more effective bargaining because of inter-union coordination involving meetings of the officials of the various unions with representation rights on a given carrier, the clearances made possible by the Industrial Union Department of the AFL-CIO, and observance of each other's picket lines.

It was to counter all of these purported advantages of the unions that the AIR Conference says it decided to improve the carriers' own self-organization for collective bargaining purposes and determine how best to coordinate the collective bargaining of the air lines. On the other hand, as indicated, the unions challenge and attempt to refute almost every one of the above claims of AIR Conference.

Initial Decision of Milton H. Shapiro, Administrative Law Judge

Do the Agreements Violate the Federal Aviation Act or the Railway Labor Act?

The Duty to Bargain in Good Faith

The question whether the agreements violate the Railway Labor Act arises because Title II of that Act is incorporated in the Federal Aviation Act by section 401(k)(4) thereof.[7] Section 2, First, of the Railway Labor Act, which is the crux of the major legal arguments of the unions, makes it the duty of carriers "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof." The unions insist that the agreements will prevent the carriers fom exerting every reasonable effort to make and maintain agreements and, accordingly, will prevent their bargaining in good faith as required by the Railway Labor Act.

The Supreme Court has held that it is the basic premise of collective bargaining that the parties deal with each other in a serious, good faith effort to reach agreement and to enter into a contract ordering their industrial relationship.[8] It has also held that the duty to bargain in good

[7] Section 401(k)(4) of the Act reads: "It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with Title II of the Railway Labor Act, as amended."

[8] National Labor Relations Board v. Insurance Agents' International Union, 361 U.S. 477, 483 *et seq.* (1960). The Railway Labor Act does not define "collective bargaining" or "bargaining in good faith". In the absence of Railway Labor Act authority, the meaning of good faith bargaining as defined in the cases involving the National Labor Relations Act may be considered relevant to the application of section 2, First, of the Railway Labor Act.

faith is incorporated in section 2, First, of the Railway Labor Act, and is the "heart" of the Act.[9]

The unions' objections that the agreements violate the good faith bargaining provisions of the Railway Labor Act are addressed to AIR Conference's plans to coordinate the air-line members' collective bargaining and to the means by which AIR Conference may seek to attain its objectives, including the possible introduction of multi-employer bargaining in the air-line industry. Therefore, these union charges of illegality are considered next.

Coordination of Collective Bargaining

AIR Conference maintains that the kind of coordination in collective bargaining that it is attempting to realize through its organization is not new in labor relations either on the part of unions or employers, and that, moreover, such coordination has been sustained in the courts, as, for example, in the so-called coordinated bargaining cases. The chief instance it cites is the arrangement approved in *General Electric Co.* v. *N.L.R.B.*,[10] The specific holding of this leading case is that a union's inclusion of members of other unions on its bargaining committee does not justify an employer's refusal to bargain. It was the position of the unions in that case that the company had successfully followed the practice of divide and conquer by making a separate firm offer almost simultaneously to each union and then whipsawing one against the other. The unions' response was to have eight of the unions involved join a committee on collective bargaining to coordinate bargaining with General Electric and Westinghouse, its chief com-

[9] Brotherhood of R. R. Trainmen v. Jacksonville Terminal Co., 394 U.S. 369, 377 (1969); Chicago and N. W. Ry. v. United Transportation Union, 402 U.S. 570, 575 (1971).

[10] 412 F. 2d 512 (2d Cir. 1969).

petitor, to formulate national goals and otherwise to support one another. This is but one of a number of recent cases in which the courts have held that union efforts to join together in bargaining with certain companies, particularly conglomerate corporations, by conducting coordinated bargaining are consistent with the provisions of the National Labor Relations Act.[11]

In the *General Electric* case the NLRB stated that the same right to determine the composition of its own bargaining committee exists for an employer as well as employees.[12]

AIR Conference finds further support for coordinated bargaining in cases where it has been held that multiemployer bargaining units should be favored as an instrument of national policy.[13] In these cases and text material[14] AIR Conference detects a steady trend toward broadening of collective bargaining units and increased coordination among employers and unions particularly where the union has attempted to whipsaw individual employers.

The unions' rebuttal to the AIR Conference position on coordinated bargaining stresses the provision made in the agreements for an irrevocable power of attorney and for damages for withdrawal from membership. In addition ALPA claims that the weighted voting structure on the Board of Directors is also peculiar to AIR Conference and distinguishes it from other employer or union organizations. While these objections are pertinent as to other

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[11] *E.g.* Minnesota Mining and Manufacturing Co. v. N.L.R.B., 415 F. 2d 174 (8th Cir. 1969); Standard Oil Co. v. N.L.R.B., 322 F. 2d 40 (6th Cir. 1963).

[12] General Electric Co., 173 N.L.R.B. 253, 256 (1968).

[13] Detroit Newspaper Publishers Association v. N.L.R.B., 372 F. 2d 569, 572 (6th Cir. 1967); N.L.R.B. v. Miller Brewing Company, 408 F. 2d 12, 15 (9th Cir. 1969).

[14] Challenges to Collective Bargaining (The American Assembly 1967), pp. 13, 23-24.

contentions of the unions, and are, therefore, considered at length later, they do not establish the illegality of the move to coordinate collective bargaining.

In the light of the *General Electric* and related cases, *supra*, which interpose no bar to coordinated bargaining of employers or unions, and in the absence of any contrary authority or evidence, it is found that the collective bargaining coordination objectives and purposes of AIR Conference are not in violation of the Railway Labor Act nor, accordingly, of the Federal Aviation Act.

Multi-Employer Bargaining

No aspect of the AIR Conference agreements is more distressing to the unions than the possibility that the collective bargaining coordination aims of AIR Conference are nothing less than a Trojan horse harboring the forces of multi-employer and even industry-wide bargaining. As the unions see the threat, these forces can assume different shapes in order to intrude themselves on collective bargaining in the air-line industry. Although the AIR Conference witnesses granted that industry-wide bargaining in the formal sense involves the consent of the employees, the unions insist that there are other ways for industry-wide collective bargaining to become a reality. ALPA, for one, maintains that there is little difference between multi-employer bargaining and the negotiation of collective bargaining agreements for member carriers on a single carrier basis. The union predicts that AIR Conference will assume virtually the same positions in each negotiation in order to achieve its goal of common industry positions, and that the effect of such bargaining strategies will be the same as if conventional multi-employer bargaining were in fact employed. ALPA concludes that the attempt to impose industry-wide collective bargaining on non-consenting unions, whether explicit or implicit, through the advocacy of common positions by

a common bargaining agent in separate negotiations is contrary to section 2, First, of the Railway Labor Act.[15]

Since AIR Conference has made it clear both on the record and in its arguments on brief that it is fully aware that multi-employer bargaining is a consensual matter under the law, there is no reasonable current prospect that it will attempt to impose such bargaining on the unions directly.

Putting to one side, for the moment, the controversial provisions of the agreements which make powers of attorney for bargaining negotiations irrevocable, and the related provisions triggering an errant member carrier's liability for damages, and focusing on other powers of AIR Conference which may lead to multi-employer bargaining, there is Board authority in the *ANC* case, *supra*, indicating that, to this extent at least, the instant agreements do not violate the Railway Labor Act, and are not adverse to the public interest.

In that case the Board approved two agreements establishing ANC, an unincorporated, nonprofit organization formed by 18 certificated air carriers to act as representative for each of its members to negotiate by collective bargaining and conclude agreements with employee representatives on matters concerning wages, working conditions and other conditions of employment. AIR Conference contends that the decision is controlling precedent requiring approval of the agreements involved in this case largely because the agreements approved there over union opposi-

[15] This contention is based on the legal doctrine that, in the absence of agreement of the parties to a multi-employer bargaining unit, or unless there is a history of multi-carrier bargaining, ordinarily such bargaining may not be imposed. Brotherhood of R. R. Trainmen v. Atlantic Coastline R. R., 383 F. 2d 225 (D. C. Cir. 1967), *cert. denied*, 389 U.S. 1047 (1968).

tion involved an industry collective bargaining organization with similar powers and purposes to those of AIR Conference.

The Articles of Association and bylaws of ANC designated it the exclusive representative of each of its members for negotiating collective bargaining agreements with pilots and empowered it to act in the same way for treating with representatives of other employees when requested by any member carrier and on approval of the Conference.

IAM and ALPA opposed approval of the ANC agreements on grounds paralleling some of the more important objections which they and other unions have against approval of AIR Conference. The major complaint against the ANC agreements was that ANC would be used by the carriers to impose industry-wide or multi-carrier bargaining on pilots and other employees, and that under those agreements each member carrier would turn over to an organization which was composed of officers of other and often competing air lines the control of a very important part of its business, possibly to the detriment of a particular carrier and, therefore, that the agreements were adverse to the public interest.

The Board rejected these contentions, holding that the agreements disclosed no requirements for industry-wide bargaining and that it could not assume that the member carriers intended to violate the terms of the agreement or that ANC would function beyond its authorization in the agreements. It considered industry-wide or multi-carrier bargaining optional and dependent upon agreement of all parties involved in any dispute. It pointed out that the Railway Labor Act does not mention industry-wide bargaining and does not attempt to legislate as to the expedi-

ency or value of any particular basis of bargaining. It went on to say:

> "In enacting the Railway Labor Act and in requiring certificated air carriers to comply with Title II of that act Congress has spoken as to the standards of public policy, or public interest, that should apply in the settling of labor disputes between air carriers and their employees. We cannot substitute our opinions for the considered judgment of the Congress and since no specific basis upon which labor negotiations must be carried on has been established but this is left to the agreement of the parties involved, we cannot find the agreements now before us to be adverse to the public interest upon any consideration of whether or not the bargaining in which the conference may participate is on a single-carrier, multi-carrier, or industry-wide basis."[16]

Like the ANC arrangement, the instant agreements do not mention any particular form of collective bargaining. But, as discussed later, unlike the ANC agreement, they do contain unacceptable provisions designed to hold the line in collective bargaining.

As might be expected, the unions do not view the *ANC* decision in the same light as AIR Conference. For example, APA argues that that case cannot be controlling in this proceeding because the air-line industry has changed substantially in the 25 years since it was decided. It wants the Board's decision in the instant proceeding to be made on the basis of current conditions. But APA has offered nothing to show what difference the passage of time has made.

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[16] 8 C.A.B. 354, at 357 (1947).

Accordingly, the Board's rulings in the *ANC* case are found to be controlling here as to the legality of the AIR Conference agreements, with one major exception. It stems from the fact that the Board had no occasion to consider in the earlier case the legality of provisions akin to the irrevocability and related damage features of the instant agreements because the ANC agreements contained no such authority. With that exception, it is further found that the agreements do not violate the duty to bargain in good faith or otherwise offend the Railway Labor Act.

Bargaining Pursuant to the Irrevocable Power of Attorney

It is fair to say that those parts of the agreements relating to the irrevocable power of attorney have been the chief target of the unions' campaign to block approval because they appear to offer the most efficient apparatus in the agreements that AIR Conference can use to impose multi-employer bargaining on the air-line industry. The underlying purpose of the irrevocability feature seems to be the effort of AIR Conference to maintain a united front in its bargaining and keep individual carriers from breaking ranks. This is part of the overall coordination strategy of the carriers which is really the guiding spirit of AIR Conference itself. AIR Conference considers it sufficient justification for this type of authority if the carrier believes its bargaining interest will be served by irrevocability.

Because AIR Conference had been operating little more than a year by the time of the hearing in this case, and had done no collective bargaining in that period, the unions' opposition to it has been confined mainly to hypothetical arguments built around the bare framework of the language of the agreements, including, of course, the provisions as to the grant of an irrevocable power of attorney. AIR Conference challenges such opposition as being based on a

notion that the agreements violate the Railway Labor Act *per se*, and argues that the courts have rejected attempts to establish *per se* violations of the duty to bargain in good faith pursuant to section 2, First, of the Railway Labor Act without consideration also of the events surrounding bargaining conduct in a particular negotiation.

While the unions have not pressed their case explicitly in the terms characterized by AIR Conference, given the lack of bargaining experience of AIR Conference reflected in the record, they have, in fact, had no option but to challenge the legality of the agreements on their face, if they were to question them at all. As a broad statement of law, the above legal defense of AIR Conference to this challenge is generally sound. But it overlooks the special, and possibly unique, nature of the irrevocability provisions of the AIR Conference agreements, which brings it within the precise and narrow confines of the rule defining *per se* violations stated by the Court in the case cited by AIR Conference which is most directly in point.[17]

The *Kennedy* case involved the legality of the Strike Insurance Plan adopted by the railroads. While rejecting the unions' arguments that the Plan was a *per se* violation of section 2, First, and other parts of the Railway Labor Act, the Court said that the principle of *per se* illegality

> "is to be applied only to conduct which *of necessity* produces consequences violative of the statute . . . or produces proscribed consequences in . . . an overwhelming proportion of the cases. . . ."[18]

[17] Kennedy v. Long Island R. R., 319 F. 2d 366 (2d Cir. 1963), *cert. denied*, 375 U.S. 830 (1963).

[18] *Id.* at 370.

Initial Decision of Milton H. Shapiro, Administrative Law Judge

Analysis of the irrevocability language of the instant agreements demonstrates that it meets this stringent test. As already noted, the sole purpose of the language is to maintain a united front of member carriers. Such a purpose is normally associated with multi-employer bargaining, and is reflected in the national labor policy. For, as AIR Conference itself points out, the national labor policy prescribes that after multi-employer negotiations have begun, withdrawal from bargaining by an employer without the employees' consent is not allowed.[19] However, holding the line in the case of single-employer bargaining has not been a part of the national labor policy for evident reasons. In short, the AIR Conference device is an anomaly.[20]

Thus, the irrevocability of the power of attorney will be invoked only when the air carrier which has engaged AIR Conference to bargain for it finds itself at odds with AIR Conference. And since at that point the association will be subordinating the employer's wishes and interests to those

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[19] N.L.R.B. v. Dover Tavern Owners' Association, 412 F. 2d 725 (3d Cir. 1969); N.L.R.B. v. John J. Corbett Press, 401 F. 2d 673 (2d Cir. 1968); N.L.R.B. v. Sheridan Creations, Inc., 357 F. 2d 245 (2d Cir. 1966), *cert. denied*, 385 U.S. 1005 (1967).

In fact, the national labor policy renders the irrevocability language superfluous as to the slim and distant possibility of multi-employer bargaining which AIR Conference relies on as one reason for retention of the bargaining provisions of the agreements.

[20] It is significant that AIR Conference has been unable to cite any other multi-employer association which attempts to make its bargaining authority irrevocable or which imposes damages for withdrawing from a labor agreement or from the association. Neither the transportation consultant who appeared on behalf of ALPA nor the one who appeared on behalf of AIR Conference could recall a similar provision adopted by any multi-employer association. None of the three multi-employer associations in the transportation industry cited as a model by the AIR Conference, namely, the National Railway Labor Conference, Trucking Employers, Inc. and the Pacific Maritime Association, prevents an employer from withdrawing from the association after a short period of notice or exposes him to liability for damages for doing so.

of other employer members of AIR Conference, what began as a one-to-one bargaining relationship with the representative of the carrier's employees, will, of necessity, be converted to bargaining on the basis of multi-employer interests as opposed to the interests of the single employer, and, presumably, on the facts of this record, without the consent of the employees' bargaining representative. Once the employer is subjected to the lock-step of the irrevocability provision, not only is he denied further control over his own destiny, including his normal freedoms to terminate bargaining, change his representative at will or reach an agreement, but his employees are also confronted with a completely new bargaining relationship, controlled not by the employer with whom they started bargaining, but by AIR Conference. Therefore, the necessary consequence of invoking the irrevocability feature is to set in motion a train of events in derogation of good faith bargaining and, therefore, violative of section 2, First, of the Railway Labor Act.[21]

The cases cited by AIR Conference to emphasize the bearing of specific bargaining conduct on claimed *per se* violations do not compel a different conclusion.[22] Since the

[21] The AIR Conference argues in its brief, citing testimony of its Executive Vice-President on cross-examination, that a carrier may condition the power of attorney so as to negate the irrevocability feature. This argument and testimony simply do not square with the language of Article II(b)(1) of the Articles of Association which is unequivocal that "a power of attorney . . . shall not be revoked until the negotiations covered by the power of attorney are concluded . . ." No leeway is afforded the member carrier to modify this aspect of the power of attorney.

[22] The instant case is readily distinguishable from the ruling in *Piedmont Aviation, Inc.* v. *ALPA*, 416 F. 2d 633 (4th Cir. 1969), *cert. denied*, 397 U.S. 926 (1970), cited by AIR Conference, that an ALPA bylaw did not in itself prove lack of good faith bargaining, but that it was only the use of the bylaw as a reason for refusal to bargain that violated the Railway Labor Act. The union bylaw in that

purpose of the irrevocability provisions is to keep individual employers from breaking ranks and entering into contracts considered by AIR Conference as not in the interests of the greater good of the employer group, they are peculiarly designed to thwart the desire of the individual employer most intent on reaching agreement with his employees. That is, restraint would be applied against the very employer whose conduct in withdrawing in order to consummate his own agreement is entirely consistent with good faith bargaining. Under these circumstances, *of necessity*, the action of AIR Conference to keep close rein on the employer would result in a breach of the duty to bargain in good faith.[23] Accordingly it is found that the provisions

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case expressed a policy against jet crews of less than three pilots, and allowed the union Board of Directors by a two-thirds vote to exempt an aircraft from this policy. Piedmont argued that the union would not bargain for a crew of less than three men because its bylaws "forbade" bargaining over that subject.

Clearly, the bylaw did not restrict, let alone violate, the duty of the union to bargain in good faith. The purpose of the bylaw is not apparent on its face. Nor did the Court clarify that point. It may well have been intended to express a safety policy, and the union need not have relied on it in any event. As the Court necessarily found, it was not the bylaw, but the union's reliance on it as a reason for refusal to bargain on the issue of crew complement in the face of an FAA certification of the B-737 for two-man crews, that was not consistent with the duty to bargain under the Railway Labor Act. In view of all of the foregoing, the *Piedmont* decision is in no sense dispositive of the issue of whether the irrevocability provision is a *per se* violation of the Railway Labor Act.

[23] While it is recognized that an employer engaged in multi-employer bargaining may suffer the same fate, one overriding distinction is that this is a result of the operation of law and is designed to preserve the stability of the multi-employer bargaining unit. (Retail Associates, Inc., 120 N.L.R.B. 388, 393 (1958)). The second distinction is that both the employees and employers in that situation undertake to bargain from the outset by mutual agreement according to given procedures. Moreover, the employers in the bargaining unit trade off benefits and burdens as the consideration for yielding individual control of the bargaining process. By contrast, under the AIR Conference system, the rules change when AIR Conference takes over, regardless of the employees' wishes, and of the individual employer's obligation to bargain in good faith with the representative of his employees.

with respect to the irrevocability of powers of attorney violate the Railway Labor Act insofar as they involve collective bargaining.[24]

Since, through enforcement of the irrevocability provisions, AIR Conference can bargain on behalf of individual employers without the unions' consent, it can realize the hold-the-line benefits of multi-employer bargaining by indirection. Under the circumstances, the readiness of AIR Conference to disclaim any interest in multi-employer bargaining in the conventional sense for the foreseeable future is understandable. AIR Conference need not wait for the consent of the employees which is not presently forthcoming if it can achieve its bargaining objective of holding the line without it.

It should be evident from all of the foregoing that even if the irrevocability feature of the agreements were found not to violate the Railway Labor Act, it is adverse to the public interest. This conclusion is particularly compelled by the procedure allowing a carrier to renounce in advance of bargaining its right to control any decisions affecting its own interests such as whether it would be subjected to a strike, an increase in the level of wages it must pay, or a change in work rules and fringe benefits of its employees. Moreover, the arrangement is also adverse to the public interest to the extent that the effort to hold the line and prevent carriers from breaking ranks leads to

[24] It would be idle for AIR Conference to suggest that the irrevocability facet of the power of attorney does not necessarily violate the Railway Labor Act because the association might choose not to use it to exercise control over a carrier threatening to break ranks. In reality, AIR Conference has no such alternative. Its failure to invoke the irrevocability clause against a dissident carrier would be a serious breach of its commitment to the other member carriers and would involve abandoning its preeminent goal to coordinate collective bargaining by maintaining a united front, and, indeed, at least to that extent, its *raison d'etre*.

hard-line bargaining which tends to exacerbate the risk of strike action and interruption of service to the public.

As noted above, the general rule is that members of multi-employer bargaining units ordinarily lose their freedom to leave the unit without the employees' consent once bargaining has begun, or to refuse to accept the agreement negotiated by their bargaining representative.[25] Nonetheless, an employer may withdraw from negotiations with the union's consent after impasse has occurred,[26] or even without the union's consent where there are unusual circumstances.[27] Therefore, even in the conventional multi-employer bargaining situation, as in single-employer bargaining, the instant irrevocable power of attorney would mean an employer's foregoing his right to withdraw in order to defend his own interests under certain circumstances, including a case of urgent need, as in the *Spun-Jee* situation.

The instant agreements compound the risk of holding a financially weak air carrier to a multi-employer bargaining unit by exposing it to an ill-definded liability for damages to other carriers if it should seek withdrawal from the bargaining unit. The carrier could well face the choice of an unfavorable labor agreement or exposure to an unknown amount of damages if it finds the agreement which

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[25] See cases cited, *supra*, note 19.

[26] Ice Cream, Frozen Custard Industry Employees, *et al.*, 145 N.L.R.B. 865 (1964) (no unfair labor practice where union executed a contract with one employer member of a multi-employer bargaining association after bargaining had proceeded to an impasse and strike); to the same effect, Plumbers and Steamfitters Union No. 323, 191 N.L.R.B. No. 121 (1971).

[27] In *Spun-Jee Corp. and The James Textile Corp.*, 171 N.L.R.B. 557 (1968), the N.L.R.B. held that because of the employer's economic distress that would result from the contract demands being made upon the association by the union, the employer was allowed to withdraw from the association even though ordinarily withdrawal would have been deemed untimely.

is acceptable to the multi-employer unit potentially harmful to itself. While it may be the prerogative of an employer to assume such risks in an industry unaffected with a public interest, air carriers do not have such an unrestricted choice. The combination of the irrevocability and damages features of the instant agreements, unique in the field of labor relations, poses too great a danger to the preservation of efficient service to be deemed consistent with the public interest. In view of the foregoing it is found that in the multi-employer bargaining situation, as well as single-carrier negotiations, the irrevocable power of attorney contained in the agreements in issue is adverse to the public interest.[28]

The right of a carrier member of ANC to retain control over its own welfare and destiny was specifically commented on by the Board in the *ANC* case:

> "If any carrier believes that its best interest is not being served by the conference that carrier, under the terms of the agreements, may resign from the conference, which is required upon receipt of notice of resignation immediately to cease from repre-

[28] AIR Conference has cited the Board's order in *Eastern Air Lines, Inc. et al.* (Order E-22824, October 29, 1965) to indicate the Board's approval of a multi-employer bargaining agreement with a clause forbidding any party from executing an agreement until all parties have reached agreement. This provision was not referred to by the Board. Like the rest of the agreement, it was subscribed to as a mutual undertaking of the five trunkline employers and the IAM, the union involved. The agreement applied only to a single negotiation, a fact the Board expressly took note of. Nor did it expose the parties to any liability for damages in the event of an attempt to withdraw. It is also noteworthy that the *Eastern* case was published at about the time the national labor policy, as reflected in N.L.R.B. decisions, began to allow withdrawal from a multi-bargaining unit in special situations.

> senting such carrier. Thus no carrier places in the control of any other carrier or group of carriers final disposition of any matter that may adversely affect its separate welfare. Its choice of the conference as its representative to carry on labor negotiations is a free choice subject at all times to cancellation."[29]

The Board's specific references to the above rights of ANC members carry with them a distinct implication that these were matters important to its approval of the agreement and that, without them, a different result might have been reached. The foregoing passage, therefore, underlines the importance of the differences embodied in the irrevocability and related damage provisions of the AIR Conference agreements withholding as they do the options which were open to the ANC members.

In view of the foregoing and all of the evidence of record it is hereby found that Article II(b)(1) of the Articles of Association of AIR Conference violates Title II of the Railway Labor Act insofar as it provides that "if negotiations have commenced as to which a member, pursuant to these Articles, has granted to the Conference a power of attorney, such power shall not be revoked by the member until the negotiations covered by the power of attorney are concluded, whether or not a withdrawal notice has been given by the member and in the event a withdrawal notice has been given, it shall not be effective until ninety (90) days after such negotiations are concluded". It is further found that, regardless of the foregoing finding of a violation of the Railway Labor Act, the said Article is adverse to the public interest within the meaning of section 412 of the Federal

[29] 8 C.A.B. 354, at 357.

Aviation Act. Accordingly, approval of the agreements in issue will be made contingent on AIR Conference's modifying them to remove the unlawful and unacceptable provisions which prohibit a member carrier from revoking a power of attorney it has granted to the Conference to act as its bargaining agent in labor negotiations.

Single-Employer Bargaining

The elimination from the agreements of the provisions for irrevocable powers of attorney for bargaining purposes and the related liability for damages converts them to substantially the same form as the agreements reviewed and approved by the Board in the *ANC* case. In the light of that decision and the agreements as modified, the various objections of the unions to AIR Conference's bargaining for individual air lines are found to be without merit.

The Five Unions contend that the agreements violate section 2, Ninth, of the Railway Labor Act which requires the carrier to "treat with each representative" of its employees. The burden of the contention is that the record establishes that once powers of attorney are issued the carrier's employees will treat with someone appointed by AIR Conference; that that representative may not understand the particular carrier-employee problems involved on the air line in question; and that, in short, the carrier will have no control over who represents its interests and who treats with its employees.

Section 2, Third, of the Railway Labor Act makes it the duty of each party not to interfere with, influence, or coerce the other in its choice of bargaining representatives. In addition, section 1, Sixth, of that Act expressly provides that the representative selected may be an "organization" and may be the representative of more than one carrier. These rights granted by the Railway Labor Act are of

overriding importance in establishing the freedom of both employees and employers from outside interference in organizing for collective bargaining purposes.

On this very point the Board said in the *ANC* case:

> "The right to choose a bargaining representative without interference or coercion is basic under the Railway Labor Act and is a right over which we have no control and with which we have no right to interfere. The same right of free choice is guaranteed to the employees with whom the carriers must negotiate and, . . . the representative chosen by either party need have no other qualification than that he be selected freely and independently by the group which he represents. Whether the choice is a wise one is not for us to decide. Were we to disapprove these agreements because of any belief on our part that the choice of representative therein made were not wise we would be substituting our choice for that of the carriers and such action would be in contradiction of the unequivocal language of the Railway Labor Act. Clearly the agreements cannot be disapproved on that ground." [30]

The right to select an organization as a bargaining representative answers the contention of the Five Unions that the representative who would treat with the employees would not be the bargaining agent of the carrier principal or principals but the bargaining agent of AIR Conference which would have become a principal in its own right. As for the further argument of Five Unions that the representative meeting with the employees would not satisfy the definition of section 1, Sixth, because he would not be

[30] 8 C.A.B. 354, at 357.

someone "designated by a carrier or group of carriers" but someone designated by AIR Conference, such a construction would defeat the plain language of the Act giving free access to bargaining representatives, and must therefore be rejected.

While acknowledging that under section 2, Third, of the Railway Labor Act "neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives", APA contends that the *General Electric* case, *supra*, is distinguishable from the instant case in a fundamental way. The difference, according to APA, is that General Electric's refusal to bargain with the union on the ground that its negotiating committee was made up in part of representatives of other unions was ruled unlawful because the outside representative explicitly renounced any intention to bargain for unions other than the electrical workers. Since no such declaration has been made by AIR Conference, APA argues that the agreements in issue contemplate that when AIR Conference negotiators bargain they will be doing so not only for the particular carrier which has granted the power of attorney but also to coordinate that carrier's settlement with the agreements of other carriers. This possibility APA deems inconsistent with the public interest and proposes, therefore, that AIR Conference not be permitted to bargain for an individual carrier unless it first makes clear that it is bargaining solely as a representative of the carrier whose power of attorney it is exercising.

APA's request is found to be unnecessary and unrealistic. While the AIR Conference bargaining agent may have a dual allegiance when acting on behalf of a member carrier in labor negotiations, his prior and primary fealty

is to the carrier which engaged the AIR Conference. This allegiance takes precedence over any coordinating design of the AIR Conference, but it is not adverse to the public interest or a violation of the Railway Labor Act for the agent to further that design if, to do so, does not conflict with the best interests of the member carrier, and does not depend on enforcing a power of attorney against its will.

On the other hand, if there is a conflict of interest, and the carrier is prepared to accept a settlement adverse to the coordinating efforts of AIR Conference, it should be free to do so, as it would be under the terms of the condition imposed herein barring the grant of irrevocable powers of attorney. Thus, while a particular negotiation may, or may not, advance the coordination objective of AIR Conference, it must conform to the needs and wishes of the carrier member for whom bargaining has been undertaken.

The ALPA objections to the structure of AIR Conference as a bargaining model in individual carrier negotiations are an elaboration of the APA and Five Unions' position. In addition, ALPA's claim that the control of bargaining authority will be in the hands of AIR Conference assumes an irrevocable power of attorney to bargain.

As to ALPA's contention that AIR Conference as the representative in negotiations, is not the party that must live with the consequences of such negotiations, it hardly needs to be noted that this is usually true of most bargaining representatives. In any event, the carrier which has granted the power of attorney and must bear the consequences of the negotiation, will be well aware of this fact when it selects AIR Conference as its negotiator.

The rest of the ALPA arguments that the use of AIR Conference as a bargaining agent necessarily involves bad faith bargaining are either speculative or unpersuasive. They turn largely on the objection that bargaining will be coordinated with industry objectives, a facet of the AIR Conference organization previously found compatible with the Railway Labor Act.

The specter of the stalking horse conjured up by ALPA and other unions whereby AIR Conference determines to advance industry objectives by selecting one carrier as a model in collective bargaining springs mainly from the disapproved provision as to irrevocability. Absent such a provision, the stalking horse figure loses whatever substance it may have had under the agreement as submitted by AIR Conference.

In view of all of the foregoing, and the evidence of record, it is found that ALPA has failed to demonstrate that, without the provisions for irrevocable powers of attorney, the structure of AIR Conference as a model for collective bargaining on behalf of individual carriers violates the Railway Labor Act or the Federal Aviation Act.

The AIR Conference Agreements in Conjunction with the Mutual Aid Pact

AIR Conference denies that the Mutual Aid Pact affects the lawfulness of AIR Conference. It regards the Pact as a form of employer's self-help sanctioned by the national labor policy, and as being similar to AIR Conference in that both seek to deal with problems raised because of the air lines' collective bargaining position. It notes, however, that the AIR Conference agreements are concerned with the way in which carriers conduct their collective bargain-

ing while the Pact takes effect only after collective bargaining has failed and a strike has resulted. Its main argument is that the availability of protection such as Mutual Aid does not have any bearing on the ways in which carriers are permitted to organize themselves for collective bargaining purposes.

BOR agrees with AIR Conference that its operation in conjunction with the Mutual Aid Pact does not violate the Railway Labor Act. But ALPA and the Five Unions oppose the combination of AIR Conference and the Mutual Aid Pact as a violation of the duty to bargain in good faith.

When the Board first approved the Mutual Aid Pact, it stated that the Pact did not purport to affect an air carrier's duty under the Railway Labor Act to bargain in earnest.[31] It was activated to protect carriers from some of the financial loss attendant on a strike. On the other hand, AIR Conference is designed to improve the coordination of collective bargaining in the air-line industry at least insofar as the members of AIR Conference are concerned. A further notable difference between the two pacts is that the Mutual Aid Pact is now open only to trunk and local service certificated carriers whereas membership in AIR Conference is open to all certificated air carriers.

One measure of the success of Air Conference, in terms of the public interest, would be the avoidance of strikes and thereby the reduction and possible elimination of dependence of air carriers on Mutual Aid.

ALPA has constructed two scenarios to display the illegal interaction of AIR Conference with the Mutual Aid Pact,

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[31] Six-Carrier Mutual Aid Pact, 29 C.A.B. 168, at 171 (1959).

and how both would be manipulated in violation of section 2, First, of the Railway Labor Act. One of the scenes rests on props from those parts of the Articles of Association which are disapproved herein. Thus, ALPA foresees that the weighted voting structure of the Board of Directors will enable the trunklines to choose a stalking horse from among the member carriers so that it might take a strike on behalf of the other carriers. It also predicts the stalking horse may or may not be a Mutual Aid Pact member, depending on AIR Conference's interests. The rein on the stalking horse would be an irrevocable power of attorney. But, as already found, this portion of the Articles should be disapproved, and, therefore, the set of this projected scenario is destined to collapse.

The other scenario conceived by ALPA assumes that an AIR Conference member carrier which is also a party to the Pact will be persuaded to become the industry's stalking horse and take a strike after being guaranteed by Pact members that it will not suffer financially. This assurance, says ALPA, can be given because the evidence in the most recent hearing on proposed amendments to the Mutual Aid Pact, held November 1971 (Docket 9977), indicates that struck carriers have actually shown profits during a strike owing to the bounty of payments from other Pact members.

The assumptions supporting this scene are too conjectural to deserve serious weight. Even accepting ALPA's figures as to the carriers' profits during a strike period, other considerations would influence, and more likely, deter the decision of a carrier to take so drastic a step. The long-run financial impact of a strike might easily nullify the short-run financial gains of the actual strike period. Against the altruism it might display toward the rest of

the member carriers, a carrier would have to weigh the damage to its own goodwill, the possibly permanent loss of its customers, the added expenses of resuming operations after a lay-up, losses from turnover of employees, and other drains on its treasury that could transform it from stalking horse to sacrificial lamb. On the whole, therefore, while a voluntary stalking horse could conceivably present itself, the risk is too remote to conclude that the conjunction of the Mutual Aid Pact and AIR Conference foreordain violations of the duty to bargain in good faith. For that matter, if this variation of the stalking horse metaphor were a practicable scheme, it could be enacted without the intervention of AIR Conference at all. The Mutual Aid Pact members could handle the whole affair.

In sum, therefore, whatever credible threat of violation of the Railway Labor Act might have been posed by the ability of AIR Conference to rely on the financial backing of the Mutual Aid Pact will be forestalled by the modifications of the agreements required herein. In view of all of the foregoing and the evidence of record, there is no substantial evidence to support a finding that the interaction of the modified AIR Conference agreements with the Mutual Aid Pact will violate the Railway Labor Act.

ARE THE AGREEMENTS ADVERSE TO THE PUBLIC INTEREST

The Impact on Labor-Management Relations

With one voice, the unions foresee a serious impairment of labor-management relations resulting from the advent of AIR Conference and its participation in collective bargaining in the air-line industry. They also largely echo each other's reasons for these fears. One of their major arguments revolves about their assumptions with respect to the adoption of multi-employer or industry-wide bargain-

ing in one guise or another as the reason for the existence of AIR Conference. They fear that whatever form multi-employer bargaining takes it will result in a broadening of strikes and labor disputes and, accordingly, result in widespread service interruptions adverse to the public interest.

Without exception, the witnesses for AIR Conference testified that the Conference has no present intention of seeking or accepting bargaining authority for its members or of seeking multi-employer bargaining. It is significant, in view of the uniform opposition of the unions to multi-employer bargaining, that the officials of AIR Conference emphasized in their testimony that they were aware that multi-employer bargaining is feasible only with union consent. In any case, the exclusion of the irrevocability feature of powers of attorney to AIR Conference for collective bargaining purposes will foreclose the possibility of back-door imposition of multi-employer bargaining which the unions consider a major threat to stable labor-management relations.

There is no persuasive evidence that a more consistent treatment by the carriers of similar issues among different parties will incite labor disruptions or even cause a higher incidence of strikes or broaden their scale. On the contrary, more consistent carrier bargaining positions might encourage more consistent settlements, and thereby inhibit rival unions from raiding incumbent unions, reduce employee discontent as between carriers, and reduce the temptation of unions to try to play off one carrier against another in their efforts to obtain more favorable settlements.

The Five Unions argue that if faced with a common industry position, the unions will be forced to coordinate

efforts to meet that position with the results that there will be major confrontations and general strikes. These broad assertions are not supported by convincing evidence. It should be evident that each side of the bargaining table has an overriding interest in avoiding such disruptive tactics.[32] The record offers no reasonable basis for any contrary inferences.

Another fear expressed by the various unions is that the intrusion of the AIR Conference and its negotiators into air-line industry negotiations will upset a delicate balance which has been established over the years between the two sides and will tend to blur the individual variations among the different companies. ALPA contends that this can only harm peaceful labor-management relations and is, therefore, adverse to the public interest.

There is no evidence that AIR Conference intends to ignore genuine differences among the carriers. In fact, the unions have not established that air carriers' employees are any more diverse and need more specialized treatment than the employees of other transportation industries where employer associations are the typical means of bargaining.

As for the unions' concern over the effect of AIR Conference on the delicate bargaining relationship between the employees and representatives of the individual carriers which have been nutured during years of bargaining, it is difficult to understand why the problem should be more troublesome on the carrier side of the table than on the union side which has included central office representatives. For that matter, these relationships apparently have been

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[32] To illustrate, the IAM general vice-president who testified was emphatic that he had no intention of calling an industry-wide strike even if he were to find himself in a joint bargaining situation.

hardy enough to withstand the turnover of individual bargaining representatives of carriers and unions alike, and of the unions chosen by the employees at various times to represent them. Finally, since both employers and employees under the Railway Labor Act have the right to a bargaining representative of their own choosing without interference from each other or anyone else,[33] it is anomalous to suggest that the exercise of that right is adverse to the public interest.

ALPA and the Five Unions also consider the AIR Conference agreements inimical to labor-management relations insofar as they make it possible for AIR Conference to have irrevocable control of its members for collective bargaining purposes. Of course, any such threat is removed by the condition on approval requiring the elimination of this authority.

The unions offer still other arguments to establish that AIR Conference will result in the deterioration of labor-management relations, but they are even less substantial than those discussed above, and, upon consideration, do not support a finding that, after the required revisions, the operation of the agreements will impair air-line labor-management relations.

In view of all of the foregoing and the evidence of record, it is found that the agreements as modified herein will not have an adverse impact on, or lead to deterioration of, labor-management relations in the air-line industry.

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[33] Airlines Negotiating Conference, 8 C.A.B. 354, at 357 (1947).

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The Effect on the Bargaining Balance between Labor and Management

Among the main reasons for the formation of AIR Conference is the conviction of the air lines concerned that there is a pronounced imbalance between the collective bargaining power of the air lines and that of the unions in favor of the latter. It is reflected in the testimony of Mr. Tillinghast, Chairman of the Board and Chief Executive Officer of Trans World Airlines,

> "That in my judgment, there is an imbalance of power in this industry which reflects itself very clearly in extraordinary rates of increase which have characterized the last few years and that there needs to be a better balance achieved if the industry is to continue as a private unsubsidized industry."

AIR Conference's labor relations consultant, Professor Northrup, was in complete agreement:

> "The air-line industry is . . . a classic example of an industry badly in need of increased cooperative effort among employers in collective bargaining."

In his opinion, despite the fragmentation of the work force in air-line industrial relations dictated by the Congress and the Railway Labor Act which has contributed substantially to industrial unrest, there is a substantial amount of coordination and mutual assistance among unions across craft lines. He cites the example of the Industrial Union Department of the AFL/CIO which has established a major program of union coordination in some industries where each company deals with a large number of unions.

In a similar vein an authority on collective bargaining in transportation heavily relied on by Professor Northrup has said in defense of the mutual support activities of employers,

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> "So long as collective bargaining presumes the right to utilize economic power, there is little basis for distinguishing between the scope of concerted action now allowed to unions and that recommended here to be permitted to employers. What distinctions have existed in the past in these respects have been based on the long history of legal imbalance in favor of employers. Since that imbalance has by now been quite fully corrected, at least so far as the transportation industry is concerned, little basis remains for continuing the restraints on the fuller exercise of employer cooperative action." [34]

Such opinion evidence typifies the voluminous documentation of the AIR Conference in this record designed to establish the need of the air lines to improve their bargaining position vis-a-vis the unions.

AIR Conference sees itself as the mechanism for overcoming the advantage which it says unions have long held over the carriers in collective bargaining, as indicated in the unions' alleged ability to win unrivaled wages and benefits, their long history of rejection of recommendations of neutral tribunals such as the Presidential Emergency Boards, and their frequent use of the strike power. Though it admits that it cannot overcome the bargaining disadvantages of the air lines which are due to the characteristics of transportation service industries and of the bargaining structure imposed by the Railway Labor Act, it expects the organization to benefit the air carriers and achieve a better balance between the two bargaining sides. By the exchange of information, prior consultation regarding proposed new

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[34] Levinson, Collective Bargaining and Technological Change in American Transportation (1971) p. 675.

departures in individual settlements, and consideration of the long-term collective interest as affected by particular negotiations, it says it will be doing the things which are routinely done by the major unions within their multi-employer union structure.

Yet, even a record as fully developed as this one cannot serve as a scale to measure the balance between the bargaining power of the air lines and that of the unions either before or after the availability of AIR Conference. However, one feasible approach to the resolution of this issue is to compare the collective bargaining tools available to the unions with those available to the air lines in order to appraise the possible influence of AIR Conference.

Major unions such as IAM, ALPA, and IBT have central organizations which act as clearing houses of information for various locals which bargain with individual carriers. While there is evidence that the air lines have consulted each other in the past during a round of negotiations with respective locals of a particular union, they had no comparable clearing house before the formation of AIR Conference.[35] To this extent the unions have had a collective bargaining tool not available to the air lines. If effective, AIR Conference should enable carriers to reduce those cases where an individual carrier acts without consideration of the bargaining needs of other carriers or establishes precedents inconsistent with industry aims even while failing to win any long-term advantage for itself.

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[35] The Personnel Relations Conference of the Air Transport Association, successor to ANC, has served latterly as a data gathering and distributing office without authority in the collective bargaining arena.

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The evidence submitted by AIR Conference to demonstrate that it is at a bargaining disadvantage because the financial resources of AIR Conference are substantially less than those of the air-line unions combined is not persuasive. A more realistic comparison of the relative economic power of the air lines and the unions would be based on the financial resources of the individual air lines as compared with those of the air-line unions rather than just the resources of Air Conference itself. The result, of course, would be entirely different, and clearly not to the disadvantage of the air lines.

AIR Conference asserts that one of its purposes in achieving more consistent settlements among the various carriers for employees who do the same or similar work is to offset ALPA's "inequity system" of negotiation. AIR Conference claims that these "inequities" are deliberately introduced into the labor contracts as a predicate for later efforts to enlarge the benefits to be obtained in labor settlements. In addition, it hopes that greater consistency will be an answer to the so-called stepping-stone strategy of gradual increases in wage levels during a given bargaining round. This strategy has elsewhere been described by AIR Conference as whipsawing, a term challenged by ALPA's transportation consultant as pejorative and the center of some controversy as to what it really means and whether such a practice exists.[36]

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[36] As originally used "whipsawing" referred to a strike tactic. In this record it has been used to describe a collective bargaining tactic. The ALPA consultant who objected to the term whipsawing as pejorative defined it as using "more favorable terms gained (as in one company) as the precedent or leverage to win equal or greater concessions from (as a related company)." He also testified that whipsawing is an accepted practice of collective bargaining to improve on the terms in a previous labor agreement. He concluded, on the basis of this definition, that, to a substantial extent, whipsawing "has been achieved everywhere in unionized American industry."

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The evidence as to whipsawing submitted by ALPA, based on its settlements with carriers in the 1970-1971 round of negotiations, supports the union's claim that those settlements reveal no such practice. Yet, there is considerable other evidence in the record which shows that, if not actually employed or achieved by ALPA in its 1970-1971 round of negotiations, it has been a device generally used by air-line unions, including ALPA, in labor negotiations, whether it is described as a stepping-stone strategy, whipsawing, or by some other term. And it has been a bargaining tool favoring the unions which the air lines are still trying to cope with.

The IBT perception of the issue of the balance of bargaining power stresses personality, nuances of inter-personal relationships, the intangibles of atmosphere, experience and attitude on one side or the other of the bargaining table. It contends that it is not possible to generalize as to the bargaining success and power of a particular industry-wide union; that, instead, the nature of a particular union's bargaining position vis-a-vis the employing air line depends on the record of the individual local and its ability to deal with all the subtleties of the bargaining attitude of its opposite number, the air line involved in the negotiations. This analysis, it submits, explains why some air lines have more frequent work stoppages than others, even though the striking employees may be members of the same nationwide union representing nonstriking employees on other carriers where there has never been a work stoppage.

This accent on a need for an "intuitive feel for the essence of the complex employer-employee relationship on each air line" tends to minimize the emphasis on power struggle which permeates the AIR Conference presentation. The

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IBT slant on the bargaining balance between labor and management is patently difficult to establish by objective proof. Yet, IBT failed to submit even opinion evidence to back up its analysis. Had it done so, it might have made a provocative contribution to the record possibly offsetting the impression created by AIR Conference as to the play of the bargaining balance and opening up a different perspective by which to examine this issue.

APA stresses that, as the air-line industry itself has recognized, the supposed imbalance in bargaining power is the result of the structure of collective bargaining in the industry which, in turn, has been dictated by Congress in the Railway Labor Act. APA insists, therefore, that any attempt to restructure the pattern of collective bargaining in the airline industry must be directed to Congress and not the Board. However, the attempt of AIR Conference to improve the bargaining position of the air lines within the framework of the Railway Labor Act follows the precedent of the National Railway Labor Conference which represents an industry which was the original model for the collective bargaining structure decreed by Congress in the Railway Labor Act.

It is apparent from all of the foregoing that, to the extent that the record admits of conclusions with regard to the nature of the bargaining balance in the air-line industry, the unions enjoy certain important bargaining advantages. They include the availability of central clearing houses for information within major unions, and better lines of communication at some locals which are more aggressive and more effective from their point of view in labor-management negotiations. In turn, these advantages have enabled the unions to make maximum use of their bargaining power

and work more efficiently and consistently toward achieving their bargaining goals. If AIR Conference can supply similar bargaining tools to air lines in a relatively weak position, it will enable them to improve their bargaining position. At the same time, other carriers, more strongly situated vis-a-vis their employees, will also be strengthened. On the whole, however, the evidence does not support a finding that any such air carrier gains from AIR Conference with respect to the balance of bargaining power will have an adverse effect on the public interest.

In the final analysis, the relative economic power of the two sides rests, on the one hand, on the ability of the employees to back up their demands with an effective strike and, on the other, of the air carrier to refuse to yield and withstand a strike and enforce also, as an alternative, a lockout of its employees. While AIR Conference may act as a catalyst to marshal and support the air lines' exercise of their considerable economic power, its own economic power to influence the bargaining balance appears to be quite limited.

The Effects of Phase II of the Wage-Price Stabilization Program

AIR Conference's handling of the air lines' interests as affected by Phase II of the Wage-Price Freeze affords the most extensive concrete evidence in this record of the organization's actual conduct of labor-management affairs. Of course, the Articles of Association make no reference to the freeze program. But the Conference has adopted a policy that no member shall agree to a settlement in excess of the guidelines set up by the Pay Board. And it has obtained powers of attorney (revocable automatically for all involved whenever 25 percent of the carriers giving

them revoke them individually) to challenge under Pay Board procedure, wage increases in excess of Pay Board standards. Armed with these authorizations, AIR Conference brought challenges before the Pay Board of contracts made by a number of carriers with their employees which contained deferred wage increases in excess of Pay Board guidelines, but gave no notice to the unions of these actions. AIR Conference seeks to vindicate its handling of Pay Board matters by describing itself as an instrument of official government policy contributing to the fight against inflation in the national economy as well as to the public interest.

Without exception, the unions have severely criticized AIR Conference for these moves. ALPA has charged it with a violation of section 2, First, of the Railway Labor Act; IBT, with "bypassing" the national labor policy.

The unions point out that it is not illegal for a union to take the position that it will insist upon contract provisions in excess of the wage guidelines; that under the law the Pay Board has the function of reviewing the propriety of implementing agreements where the guidelines have been exceeded; and that the Wage-Price Stabilization Program has not attempted to interfere with collective bargaining but is intended to make it subject to control by the Pay Board.

There is no evidence that the Pay Board has acted on the AIR Conference challenges or that the unions have taken counter-measures. While AIR Conference would have it appear that it acted in furtherance of the Administration's anti-inflation program and on behalf of the public interest, the unions accuse it of meddlesome inter-

ference with collective bargaining agreements. The nub of the union position is that the Pay Board episode demonstrates an officiousness on the part of AIR Conference which has already damaged labor-management relations, exemplifying the mischief AIR Conference will be capable of in the future.

After the thickets of union charges are cleared away, the evidence revealed is that AIR Conference challenged existing wage agreements providing for wage increases in conformance with Pay Board regulations but without taking care to inform the unions, as parties directly concerned. The fact that the unions were seriously distressed by challenges to wage increases already contracted for is certainly understandable. And while it cannot be gainsaid that the rather embittered response of the unions reflects some strain put on air carrier labor-management relations, neither can it be found that the Pay Board episode as depicted by this record demonstrates that AIR Conference's conduct was adverse to the public interest, or that it presages other as yet unknown conduct that will be inimical to the public interest. Nor is there any basis for finding, as charged by certain unions, that there was a violation of national labor policy or any illegality in AIR Conference's handling of this affair. On the contrary, without minimizing the unions' sense of resentment over these incidents, the most significant aspect of the AIR Conference relationship to the Wage-Price Stabilization Program which the record presents is the Conference's purpose to hold the line on wages, and, accordingly, its potential for thus assisting the objective of the Program to restrain inflation in the national interest.

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The Effect of the Agreements on Productivity and Efficiency of Labor

ACAP requested and was granted consideration of this issue, but having taken no part in the proceeding except for an appearance at the prehearing conference, it has offered no evidence on this or any other issue in the case. The evidence on this point is scant and only incidental to other matters covered.

Presumably, one of AIR Confrence's objectives is to improve productivity and efficiency. Whether it is successful will depend, of course, on its ability to resist restrictive work rules which tend to reduce productivity. It may be anticipated that most of the impact of AIR Conference on productivity and efficiency of labor will make itself felt during the collective bargaining process. The danger projected by all the unions is that hard-line collective bargaining tactics on the part of AIR Conference and its members, including unyielding opposition to work restrictive rules, may precipitate an interference with productivity through slowdowns or even work stoppages. Of course, once effective contracts have been negotiated and signed with particular groups of employees, the operations of AIR Conference will have no direct bearing on productivity and efficiency.

Since it has been found that, after modifications of the agreements, AIR Conference will not impair labor-management relations, it may also be anticipated that it will not have an adverse effect on productivity or efficiency. But AIR Conference is still an experiment which will have to withstand the test of time and experience. If, as the AIR Conference members anticipate, and as the record tends to indicate, the services of AIR Conference preserve and even

improve the climate of labor-management relations, productivity and efficiency of labor should be at least maintained. If AIR Conference succeeds in resisting work restrictions without also causing work stoppages or slowdowns, productivity and efficiency should be improved. But given the nature of this issue, and little more than speculation to go on, it cannot be satisfactorily resolved on the basis of this record.

Discrimination in Restraint of Trade and the Anti-Trust Laws

In view of the relation between section 412(b) and section 414 of the Act conferring immunity from the anti-trust laws for agreements approved under section 412, the agreements in issue must be reviewed to determine whether they violate the policy and provisions of the anti-trust laws.

Section 6 of the Clayton Act provides that labor is not a commodity or article of commerce within the purview of the anti-trust laws.[37] The courts have held that agreements of employers relating to their labor relations do not fall within the anti-trust prohibitions unless they involve a purpose to restrain competition with respect to a product or service market.[38] The Board has followed this doctrine in approving the Mutual Aid Pact[39] and the agreement creating the ANC. In neither case did the Board find that the agreements under consideration contravened the policy or provisions of the anti-trust laws.

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[37] 15 U.S.C. § 17.

[38] United Mine Workers of America v. Pennington, *et al.*, 381 U.S. 657 (1965); Amalgamated Meat Cutters v. Jewel Tea Co., 381 U.S. 676 (1965); Apex Hosiery Co. v. Leader, 310 U.S. 469 (1940).

[39] Mutual Aid Pact Investigation, 40 C.A.B. 559, 581 (1964).

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Nothing in the agreements in issue nor in the record discloses any design on the part of AIR Conference or its members to restrict commercial competition among the air lines, or to gain some competitive advantage on the part of some air carriers as against others, or that the AIR Conference will actually result in the fixing of prices or restrict air carrier operations or otherwise restrain or eliminate competition. Furthermore, it is clear that, inasmuch as the organization has been open equally to all domestic certificated air carriers, there is no intention to discriminate against nonmember carriers. And so far as such carriers are concerned, if the purposes of AIR Conference are achieved, they may well benefit from any gains realized by AIR Conference rather than be exposed to any injury.

The Five Unions and ALPA contend that by removing the freedom of the carriers to bargain and decide bargaining policy, whether by irrevocable power of attorney or by the tiered structure of representation on the Board of Directors and policy enforced by the large carriers, the agreements violate the anti-trust laws. They rely on *United Mine Workers of America* v. *Pennington, et al.*,[40] for the proposition that any agreements in the field of labor relations are objectionable where the parties surrender freedom of action.

The *Pennington* case is not applicable to the agreements even as proposed, and certainly not as altered by the conditions imposed herein excluding irrevocable powers of attorney and prohibiting the proposed tiered system of representation on the AIR Conference Board of Directors.[41] In

[40] 381 U.S. 657 (1965).

[41] The need for the latter condition is discussed next.

that case the union agreed, in return for higher wages, to permit and assist rapid mechanization in the mines and to impose the terms of its agreement with the large producers on all other producers without regard to their ability to pay. The increased wages consisted in part of larger payments into the union welfare and retirement fund, representing the union's share of gains resulting from increased productivity. Small producers, whose mines were not mechanized, were compelled to make the same contributions to the fund. The court held the agreement illegal under the anti-trust laws because it bound the union to pursue a fixed policy in dealing with employers outside the bargaining unit covered by the agreement. The agreement clearly offended the anti-trust laws by requiring the union to agree to impose the terms on other employers for the purpose of driving competitors out of business.

No such scheme is involved in the AIR Conference agreements or organization. Moreover, the conditions imposed herein remove any valid objection that the air carriers' freedom of action would be surrendered contrary to the holding in the *Pennington* case.

Finally, it is noteworthy that the Court in the *Kennedy* case, *supra*, which referred approvingly to the Board's acceptance of the Mutual Aid Pact, also concluded that cooperative efforts by carriers in combatting the risks of labor unrest do not result in "anti-competitive regulation of the pricing, supply, or distribution of goods or services."[42]

In view of all of the foregoing and the evidence of record, it is found that the agreements do not discriminate in restraint of trade against any air carrier, or otherwise violate the anti-trust laws.

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[42] 319 F. 2d 366, at 373.

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The Representation Structure of the AIR Conference Board of Directors

The system of representation on the AIR Conference Board of Directors set up by the agreements has drawn almost as much of the unions' fire as the provisions allowing irrevocable powers of attorney. Their objection is that non-trunkline carriers are being discriminated against because the agreements allow each of the trunkline carriers and Pan American to be represented on the Board by its chief executive or a designee, whereas all the other members of the Conference, consisting of regional, local, territorial, and all-cargo carriers, are permitted a maximum of three directors for the group combined.

AIR Conference considers this tiered system of representation to be entirely reasonable as a reflection of the interests of the carriers and their financial commitment to AIR Conference. Thus, AIR Conference points out that the nine largest carrier members employ nearly 90 percent of all the unionized employees of the total number of Conference members; and that inasmuch as the financial obligations of the Conference are apportioned according to relative revenues, they fall on the largest carriers to the greatest extent. The association emphasizes that the Board of Directors has no authority over any vital concern of an individual carrier without the latter's specific prior consent by means of an executed power of attorney. It contends that most decisions of the Board of Directors requiring a formal vote relate to finances, and none involves air-line traffic or other commercial activities where the interests of different categories of carriers might conflict. Finally, AIR Conference apparently finds reassurance in the fact that none of the smaller carriers has objected to the repre-

sentation arrangement and that no carrier has cited it as a ground for refusing to join.

The responsibilities of the Board of Directors do not begin and end with financial disbursements and receipts. In the words of Article V of the Articles of Association, "The policy of the Conference shall be established by a body to be known as the Board of Directors". The central interest and concern of AIR Conference is collective bargaining and labor relations and the nature of such labor negotiations is subject to the ultimate control of the Board of Directors. They determine whether a grant of the power of attorney by a member carrier should be accepted, choose the Conference president, and have the final decision on the assessment of damages. The record shows that at least some of the large carrier members of AIR Conference are in the association to enable them to have some influence on the decisions of the smaller carriers in the area of pay, fringe benefits and work rules. This suggests that, contrary to AIR Conference's assumptions, different categories of air lines do not necessarily concur on collective bargaining and labor relations issues and that the large carriers will use all the influence they can muster to influence the decisions of smaller carriers. Insofar as the public interest is concerned, it is immaterial that the smaller carriers have not voiced dissatisfaction with the tiered system of representation on the Board of Directors. This is a matter for the Board's determination, not the carriers'.

The tiered representation arrangement subjects the non-trunkline carriers to the domination of the trunkline carriers and denies those non-trunkline carriers which have no individual vote effective means of having their positions adopted unless the trunk carriers go along. The members

without a seat on the Board suffer the inequity of having to depend on the inclinations of those non-trunkline members with seats who may differ with them about the handling of AIR Conference business.

The Board has had occasion to dispose of a similar question of representation in the course of proceedings involving a general inspection and review of the activities and practices of the AIR Transport Association. In its orders in that proceeding issued in 1963 and 1964 the Board left no doubt that it regarded a weighted voting structure, such as the one in issue in this proceeding, as adverse to the public interest:

> "The Articles of Association of ATA have in recent years provided for a system of weighted voting under which a carrier's voting strength is measured by the revenue ton-miles it carried in the prior year. As originally constituted, each carrier member of ATA had an equal vote. In 1946, as the increase in the number of certificated carriers reduced the voting control of the larger carriers, a formula equating voting strength with size of carrier was adopted. Under the present formula, the "Big Four", with Pan American, are in a position to dominate the selection of the board of directors in which is vested (Article V) 'The general management and control of the affairs, funds and property' of the Association. Each director may designate an alternate from the executive staff of his company. The directors choose the officers of the Association, including the president, who is the executive officer with full powers of supervision and appointment of employees.

> It would be only on the basis of a compelling need in the public interest that a provision for according voting control of the trade association to a small group of the larger carriers could be justified. None of the other air carrier trade associations has presently any comparable voting system. The Board finds that there is no basis in the public interest for continuing to approve such control . . ." [43]

The only difference between the above ATA system and the one under consideration is that here the domination of the large carriers is preordained by the tiered representation structure on the Board of Directors established in the Articles without the intervening step of the vote of the members to permit the same result in the ATA case. Moreover, the parallel between the authority and responsibilities of the Boards in each instance is striking. Clearly, the record here discloses no compelling need for weighted representation on the Board of Directors.

The effect of the two cases cited by AIR Conference to support its representation structure is in no way contrary to the rationale and objective of the Board's decision in the *ATA* case, *supra*. Thus, the primary reference[44] involved the decision of the Board to require equal voting by all members as to all functions of the Air Express Committee —the Board having previously found the carriers' proposal for weighted voting adverse to the public interest— except that it allowed weighted voting as to (1) advertising and sales promotion expenses, and (2) tariff charges, in-

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[43] ATA Articles of Association, 39 C.A.B. 887, at 889 (1963).

[44] Allegheny Air Lines, Inc., *et al.*, Order E-23066 (January 3, 1966).

surance and accounting provisions. Given the nature and functions of the Air Express Committee, which governs air express operations of the air lines, weighted voting in these limited respects preserves equality, rather than denying it.

The second case cited[45] is even less persuasive support for the AIR Conference position. The Board there required the ATA Articles of Association to provide for (1) equal voting on an unweighted basis for each regular member, and for (2) representations on the Board of Directors of the various classes of ATA members, unless all members of any class elected not to be represented on the Board for any particular year. This ruling in no way justifies the representation system advocated by AIR Conference.

In view of the foregoing and the evidence of record it is found that the tiered representation system of the AIR Conference Board of Directors discriminates against nontrunkline carriers and, therefore, is adverse to the public interest. Accordingly, a provision for granting all member carriers of AIR Conference an equal voice on the Board of Directors will be made a condition of approval of the agreements.

Conditions on Approval of the Agreements

Besides the conditions on approval already found necessary requiring the elimination of the irrevocability provisions tied to powers of attorney granted by member carriers to AIR Conference for collective bargaining purposes, and calling for the revision of the representation structure of the AIR Conference Board of Directors, consideration must also be given to other conditions proposed by BOR and APA, as well as a condition relating to the liability for damages for "unauthorized withdrawal".

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[45] Air Transport Association, Order E-20511 (February 25, 1964).

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Damages for "Unauthorized Withdrawal" from AIR Conference

An integral part of the AIR Conference plan to maintain a united front for collective bargaining purposes is the provision for damages in the Articles of Associations and the bylaws in the event a member carrier does break ranks.[46] Pursuant to section II(b)(2) of the Articles of Association "The execution of any unauthorized agreement by a member, or the termination of a power of attorney in violation of subsection (1) . . . without the unanimous consent of the Board of Directors shall constitute an unauthorized withdrawal from the Conference and shall subject that member to the damages prescribed in the bylaws." An "unauthorized agreement" is defined as "any agreement or understanding negotiated by a member carrier on its behalf, or any modification thereof, negotiated or voluntarily agreed to in any manner except pursuant to the power of attorney granted by such member to the Conference." The record shows that the above provision for damages is just as unique in the articles of employer associations as the irrevocability feature. No similar penalty has been cited as being a part of the structure of any other employer association.

According to Article V of the bylaws, any employer member found guilty by the Board of Directors of an unauthorized withdrawal which "appears to have caused direct and immediate monetary loss to the Conference or one of its members, or jeopardizes pending negotiations of any member of the Conference, or appears likely to affect the

[46] As the Executive Vice-President of AIR Conference testified, "The damage clause . . . was drafted with the power of attorney situation primarily in view. There is no question about that."

present or future effectiveness of the Conference . . ." will be liable for "actual damages provable by the Conference or by any member of the Conference as having been caused, in whole or in part, by such act or omission, and for such other damages as may be specified in any applicable power of attorney executed by such member and approved by the Board of Directors." Any dispute as to the amount of damages to be assessed against any transgressing member is to be referred to final and binding arbitration at the instance of any party to the agreement.

On the basis of testimony of AIR Conference witnesses it appears that the extent of the liability which may be incurred and other implications of the damage provisions have not been fully explored. On their face, the damage provisions expose all member carriers to inordinate financial penalties and could mean disaster for a weak or small carrier.

In view of the foregoing, it is found that the provisions for damages in the Articles of Association and the bylaws of AIR Conference covering unauthorized withdrawal where a power of attorney for collective bargaining purposes is involved are adverse to the public interest and are hereby disapproved. It is also found that, inasmuch as the said provisions for damages are the sanction specified in the agreements to prevent revocation of a power of attorney, they also interfere with the duty to bargain in good faith, and violate section 2, First, of the Railway Labor Act. Accordingly, approval of the agreements in issue will be made contingent on the elimination of all provisions for damages which may be assessed against member carriers for action taken with respect to powers of attorney granted AIR Conference for collective bargaining purposes.

Disapproval of such provisions for damages is warranted without regard to whether the infraction occurs in the context of single-employer or multi-employer bargaining. This result is consistent with the prior finding that the irrevocability clause is adverse to the public interest and should be disapproved with respect to both types of bargaining. It must be emphasized that while the instant agreements are illegal insofar as they attempt to prevent an air carrier from breaking ranks in the case of single-employer bargaining, the national labor policy as expressed in case law does afford adequate protection to a multi-employer unit to prevent the untimely withdrawal of any of its members.[47] In effect, therefore, the elaborate precautions taken in the instant agreements and bylaws to hold the line are superfluous as to multi-employer bargaining, and in certain situations, such as impasse or unusual circumstances,[48] would be so harmful to individual carriers as to be adverse to the public interest.

AIR Conference as Bargaining Agent in Negotiations with Single-Carrier Unions

APA, on behalf of itself as the union which represents no other pilots except those at American, and on behalf of AMFA which represents only mechanics at Ozark and Air West, proposes that if the Board approves the AIR Conference agreements, it require as a condition of approval that AIR Conference not be designated as a bargaining agent in negotiations with unions primarily identified with an individual carrier. APA distinguishes unions like itself from those which are supposed to be the real concern of AIR Conference, that is, industry-wide unions allegedly with central

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[47] See cases cited *supra* note 19.

[48] See cases cited *supra* notes 26 and 27.

control and capable of whipsawing the several air carriers. It contends that even assuming AIR Conference's postulates about industry-wide unions are correct, the need for coordinated bargaining does not exist as a response to such unions as APA and AMFA.

The short answer to the APA proposal is that, under the provisions of the Railway Labor Act, a union or an employer has a right to choose its own bargaining representative without outside interference of any kind. Thus, the Board is not empowered to impose the requested condition.[49]

ATA-Type Conditions

BOR in its brief proposed for the first time in this proceeding that certain so-called ATA-type conditions,[50] attached hereto as Appendix A, be imposed on approval of the AIR Conference agreements. Neither these nor similar conditions were considered at any time during the course of the hearing. Nor has BOR offered any explanation as to the need for the conditions. However, it has been the Board's policy to impose like conditions on its approval of agreements for the formation and operation of trade associations of air carriers.[51]

On the other hand, AIR Conference, as an association with the primary purpose of coordinating the collective bargaining activities of its members and dealing solely with

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[49] *ANC* case, *supra,* at 357.

[50] They derive their name from the leading case in which they were part of an extended controversy. ATA Articles of Association, 39 C.A.B. 881 (1964).

[51] *E.g.* International Air Charter Association, Order 72-1-12, January 6, 1972; National Air Carrier Association, Order E-19232, January 25, 1963; National Air Taxi Conference, Order E-19008, November 14, 1962; and Air Freight Forwarders Association, Order E-18818, September 21, 1962.

industrial relations matters, is clearly distinguishable from the kind of trade association which the Board has required to comply with ATA-type conditions. The joint activities of the carrier members of AIR Conference do not impinge on the anti-trust laws, for, as found herein, the operations of AIR Conference will have no adverse effect on commercial competition. Perhaps the primary objective of the Board in imposing the ATA-type conditions on associations has been to insure its ability to police their operations as being in the public interest and as not abusing the grant of anti-trust immunity which Board approval of their agreements confers.

Not only is AIR Conference confined to a much narrower scope of operations than the typical air carrier association which seeks approval of the Board, but the collective bargaining process which is a major interest of the Conference is usually left to the devices of the bargaining parties. Effective collective bargaining is virtually impossible if, as some of the conditions proposed by BOR would require, AIR Conference, as one side of the bargaining exchange, would be denied the right of privacy and confidentiality which is imperative in labor negotiations. Therefore, only those ATA-type conditions proposed by BOR which are consistent with the nature and purposes of AIR Conference as approved herein, and with the national labor policy of noninterference with the free operation of the collective bargaining process, will be adopted.

In pursuance of AIR Conference's overall position that the proposed ATA-type conditions would undermine its effectiveness, it has specifically taken exception to proposed conditions 4(a), (d), (e), (f), (g) and (h) (Appendix A attached). It also objects to that part of proposed condition

3 which would require a mandatory 20-day waiting period after powers of attorney are filed with the Board until they would be allowed to take effect.

Turning first to AIR Conference's objection to the waiting period required by condition 3, it appears that the association is strongly opposed to any delay of the effectiveness of any powers of attorney conferred, yet bases its argument entirely on the risks of delay in the collective bargaining process. It urges that time may be of the essence in the consummation of an agreement.

Since BOR has offered no explanation for any of the proposed ATA-type conditions, no need for the disputed delay provision has been established, nor does any present itself, at least with respect to powers of attorney for collective bargaining purposes. There is no evidence in the record to support either side of this dispute. In any event, it is highly doubtful that the Board would have any occasion to interfere with the grant of a power of attorney for collective bargaining purposes. In view of all of the foregoing, therefore, it is found that the 20-day delay period proposed as part of condition 3 should be inapplicable as to any power of attorney granted for collective bargaining purposes, but may be retained with respect to powers of attorney for other purposes.

To safeguard the confidentiality of the collective bargaining process, proposed conditions 4(a), 4(d), and 4(e) will not be adopted.

In view of the nature of AIR Conference, condition 4(f), which requires submission to the Board of public relations programs, does not appear to be warranted. The main reason for its original adoption in ATA proceedings, namely,

to allow Board review of programs which might be objectionable as efforts in restraint of trade, do not apply to the type of association involved here. Moreover, public relations programs in furtherance of collective bargaining, like collective bargaining itself, are probably best left to the two sides to handle without outside interference.

Absent the possibility of restraint of trade and abuse of anti-trust immunity which led the Board to impose condition 4(g) in the typical case involving approval of a trade association, this condition is unnecessary here. Besides, a condition restricting the attorney-client privilege would seriously impair the functioning of AIR Conference as a bargaining agent for member carriers. The Conference anticipates that it will be called on to give legal advice to member carriers in connection with bargaining negotiations and that the carriers will also be represented in other aspects of bargaining including administrative and judicial proceedings, Mediation Board proceedings, Presidential Emergency Board proceedings, arbitration proceedings or lawsuits arising from collective bargaining negotiations. Since it has been found that it is not adverse to the public interest for AIR Conference to act on behalf of its members in these respects, and since there are no anti-trust safeguards to be maintained, the attorney-client privilege need not be limited in the same respects.

All the other ATA-type conditions proposed by BOR will be adopted, including condition 4(h) which AIR Conference also opposes. Weighing the Board's possible needs for visitation rights reserved by condition 4(h) against the fact that such visitation rights will in no way interfere with the approved functions of AIR Conference, it is in the public interest to preserve to the Board the right to

be thus kept apprised of the association's activities. In this connection, condition 4(h) as proposed by BOR will be modified to exclude Board access to materials in fact legally privileged against disclosure by reason of an attorney-client privilege which AIR Conference or a member carrier, under specified circumstances, is entitled to assert.

In view of all of the foregoing and the evidence of record it is found that, with the modifications indicated above, conditions 1, 2, 3, 4(b), (c), (h) and 5 proposed by BOR, and listed in Appendix A attached, shall be imposed on approval of the AIR Conference agreements.

Summary of Findings and Conclusions

In the light of certain fundamental goals of AIR Conference, it may be considered a latter-day version of ANC. To the extent it conforms to the scope of the predecessor organization, it does not violate the Act and is not adverse to the public interest. However, the AIR Conference agreements are more ambitious in significant respects, and some of these departures from the ANC model—which the record shows to be unique for any type of employer association—are found to be in violation of the Act, or adverse to the public interest, or both. Thus, the provisions which make irrevocable a power of attorney granted by a member carrier to AIR Conference to act on its behalf in collective bargaining matters violate the duty to bargain in good faith imposed by the Railway Labor Act insofar as they apply to single-employer bargaining. They are also adverse to the public interest, whether enforced in single-employer or multi-employer bargaining. Similarly, those provisions of the agreements which subject a member carrier to liability for damages for an unauthorized withdrawal from

the Conference or for otherwise causing a breach or termination of a grant of a power of attorney to AIR Conference to act as its bargaining agent in labor negotiations are also found to violate the Railway Labor Act and to be adverse to the public interest. In view of the above findings, approval of the agreements is made contingent on the filing of amendments by AIR Conference which exclude the offending language from the agreements.

Because the tiered system of representation of member carriers on the AIR Conference Board of Directors is also found to be adverse to the public interest, a further amendment of the agreements is required as a condition of approval. This amendment is designed to effect the replacement of the said tiered system with one granting each member carrier an equal voice on the Board of Directors.

Approval of the agreements is also made subject to certain so-called ATA-type conditions. But only those ATA-type conditions are imposed which are compatible with the purposes and nature of AIR Conference, an air carrier association concerned exclusively with labor relations and, therefore, basically different from the typical trade association which the usual ATA-type conditions are intended to control.

Ultimate Findings

On the basis of the foregoing findings and conclusions, and all the evidence of record[52], it is found that, contingent on the filing of the amendments making the modifications required in paragraph 1 below, Agreements CAB 22367

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[52] All contentions of the parties which have not been dealt with herein have been considered by the Administrative Law Judge, and are found not to alter this decision.

and 22368, filed by AIR Conference, are not adverse to the public interest or in violation of the Federal Aviation Act of 1958, as amended, and should be approved, subject to the conditions specified in paragraph 2 below:

1. Not later than 30 days after this decision is made effective by the Board, there shall be filed with the Board amendments to the agreements conforming with the following required modifications thereof:

a. All provisions which prohibit revocation in whole or in part of a power of attorney granted by a member carrier to AIR Conference to conduct collective bargaining on its behalf, including related provisions for suspension or withdrawal of membership, assessment of damages, or other sanctions against such revocation, shall be eliminated;

b. All provisions for assessment of damages against a member carrier for "an unauthorized withdrawal from the Conference" as defined in the agreements, or for otherwise causing a breach or termination of a power of attorney granted by the member carrier to AIR Conference to conduct collective bargaining on its behalf shall be eliminated;

c. The provisions for a tiered system of representation of member carriers on the Board of Directors of AIR Conference whereby each trunkline and Pan American Airways is represented on the Board by its chief executive, or his designee, while all other member carriers combined are permitted up to three representatives on the Board, are to be replaced by provisions for a system whereby each member carrier of AIR Conference shall hold an equal voice on the Board of Directors.

2. The agreements shall be subject to the following conditions:

a. The approval of the agreements shall not be deemed a determination as to the reasonableness of the financial provisions thereof for future ratemaking or other regulatory provisions under the Act.

b. The approval shall not affect the rights and obligations of the parties, or of their employees, under the Railway Labor Act.

c. Copies of all powers of attorney granted pursuant to the provisions of the Articles of Association (Agreement CAB 22368) shall be filed with the Board's Docket Section and the Director, Bureau of Operating Rights, within five days after the grant thereof, and, except for powers of attorney granted by member carriers to AIR Conference to conduct collective bargaining on their behalf, no such power of attorney shall take effect until twenty days thereafter.

d. The air carrier members of AIR Conference shall file with the Board within 15 days of adoption, a copy of detailed procedures adopted for handling the arbitration of matters made subject to arbitration.

e. The air carrier members of AIR Conference shall file with the Board within 30 days of preparation copies of written opinions and reports or actions of the Board of Directors and Advisory Board, or decisions of arbitrators which result in a refusal of membership, the expulsion of a member, or other disciplinary action.

f. AIR Conference and its air carrier members agree that the Board and its authorized agents shall have access to and authority to inspect all accounts, records, and memoranda, including all documents, papers, and correspondence

belonging to or in possession of AIR Conference; *provided, however*, that the Board shall not have access to and authority to inspect materials which are in fact legally privileged against disclosure by reason of an attorney-client privilege which AIR Conference (or, as to documents heretofore created, a member of AIR Conference) is entitled to assert.

g. Jurisdiction in this proceeding be and it hereby is retained for the purpose of imposing such further conditions as the Board may from time to time find to be required in the public interest.

An appropriate order is attached.

/s/ MILTON H. SHAPIRO
Milton H. Shapiro
Administrative Law Judge

Attachments
November 8, 1972

Appendix A

BOR'S RECOMMENDED CONDITIONS ON APPROVAL OF AIR CONFERENCE AGREEMENTS

1. The approval of the Agreements shall not be deemed a determination as to the reasonableness of the financial provisions thereof for future ratemaking or other regulatory provisions under the Act.

2. The approval shall not affect the rights and obligations of the parties, or of their employees, under the Railway Labor Act.

3. Copies of all powers of attorney granted pursuant to the provisions of the Articles of Association (Agreement C.A.B. 22368) shall be filed with the Board's Docket Section and the Director, Bureau of Operating Rights, within five days after the grant thereof, and no such power of attorney shall take effect until twenty days thereafter.

4. The approval herein shall be subject to the following conditions:

(a) That the air carrier members of AIR Conference shall submit to the Board within 15 days all recommended practices, agreements, and resolutions adopted by AIR Conference, its Board of Directors and Advisory Board, or any permanent committee established pursuant to the Articles of Association and Bylaws.[1]

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[1] *Provided,* that the submission of such matters by and relating to non-permanent committees shall be made as may be directed by the Board at any time; *and further provided,* that this requirement shall not be deemed to relieve the parties from complying with the provisions of section 412 of the Federal Aviation Act.

(b) That the air carrier members of AIR Conference shall file with the Board within 15 days of adoption, a copy of detailed procedures adopted for handling the arbitration of matters made subject to arbitration;

(c) That the air carrier members of AIR Conference shall file with the Board within 30 days of preparation—copies of written opinions and reports or actions of the Board of Directors and Advisory Board, or decisions of arbitrators which result in a refusal of membership, the expulsion of a member, or other disciplinary action;

(d) That AIR Conference shall maintain full and complete minutes of meetings of its Board of Directors, Advisory Board and of its general membership;[1]

(e) That the air carrier members of AIR Conference shall file the agenda for such meetings and the minutes thereof with the Board within 30 days after the meeting;[2]

(f) That the air carrier members of AIR Conference shall file with the Board a true copy, or if oral, a true and complete memorandum, of any public relations program authorized or adopted by the Board of Directors, Advisory Board or members within 30 days after such adoption;

(g) That AIR Conference shall so conduct its affairs as to preclude it, its officers or employees, from engag-

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[1] Such minutes shall contain, *inter alia*, a summary of the discussion identifying each participant on each matter, regardless of the action, or lack of action taken thereon.

[2] The filing of minutes will not relieve the air carrier members of AIR Conference from the requirement for filing separately contracts and agreements subject to section 412 of the Act.

ing in the practice of law, in such manner as to create a claim of privilege against disclosure to the Board of information or documents based upon an alleged attorney-client relationship between it, its officers or employees, on the one hand, and its members, on the other.[1] Nothing in this condition, however, shall prevent attorneys employed or retained by AIR Conference from rendering confidential legal advice to, and accepting confidential communications in connection therewith from, officers or employees of AIR Conference or its instrumentalities, or individual members of its various committees, etc., with respect to the activities of AIR Conference or its instrumentalities or of such committees, etc., or shall prevent AIR Conference from asserting attorney-client privilege with respect to any such communication, provided that the procedures hereinafter called for have been followed. AIR Conference shall promptly establish standard procedures for the handling of written documents and communications as to which AIR Conference desires to preserve its asserted right to claim attorney-client privilege, and shall report such procedures and all subsequent revisions thereof to the Board. Such procedures shall provide for at least the following:

(1) Any document which is claimed to be confidential by reason of an asserted attorney-client privilege shall be promptly identified, so marked, and segregated. This shall be done within 60 days of the creation of such document or its receipt by AIR Conference, as the case may be. As to documents heretofore created, it shall be done within 90 days after imposition of this condition.

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[1] Such restriction is not intended to prohibit the participation of an association in a Board proceeding pursuant to the provisions of Part 263 of the Board's Economic Regulations.

(2) All such documents which AIR Conference elects to keep in its possession or control shall be kept in a separate file or files in the charge of an appropriate principal officer of AIR Conference or of its legal staff.

(3) The air carrier members of AIR Conference shall report quarterly to the Board how many documents have been segregated in the above-described confidential files.

(4) Upon request of the Board, AIR Conference will furnish the Board with a list of all documents so segregated, such list to give the date, author, and addressee of each document or communication, and as detailed a description of its contents as preservation of confidentially will permit.

(h) The AIR Conference and its air carrier members agree that the Board and its authorized agents shall have access to and authority to inspect all accounts, records, and memoranda, including all documents, papers, and correspondence belonging to or in possession of AIR Conference, other than documents, papers, and correspondence segregated in accordance with the procedures specified by paragraph (g) of this order; *Provided, however*, that the Board shall have access to and authority to inspect all such segregated materials except those which are in fact legally privileged against disclosure by reason of an attorney-client privilege which AIR Conference (or, as to documents heretofore created, a member of AIR Conference) is entitled to assert.

5. Jurisdiction in this proceeding be and it hereby is retained for the purpose of imposing such further conditions as the Board may from time to time find to be required in the public interest.

APPENDIX D

CAB Order 71-4-167 issued April 28, 1971

Appendix D

CAB Order 71-4-167 issued April 26, 1971

Airline Industrial Relations Conference Investigation

Order 71-4-167

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD, WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board at its office in Washington, D. C. on the 26th day of April, 1971

Docket 23267

Agreements CAB 22367 and 22368

ORDER DEFERRING ACTION AND ESTABLISHING PROCEDURAL FRAMEWORK

On April 6, 1971, there were filed pursuant to section 412 of the Federal Aviation Act of 1958, as amended, (the Act) two agreements between Alaska Airlines, Inc., American Airlines, Inc., Continental Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., North Central Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Piedmont Aviation, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.[1] The first agreement (CAB 22367) is entitled "Agreement to Establish the Airline Industrial Relations Conference" (AIRCO); and the second (CAB 22368), constitutes the Articles of Association of AIRCO.

According to the Articles of Association the particular objects and purposes of AIRCO are as follows:

(a) Planning and recommending a program to all member carriers for promoting a more consistent po-

[1] Counterparts subsequently were filed on behalf of Hughes Air Corp. d/b/a Air West and Mohawk Airlines, Inc.

sition on issues in future or pending labor negotiations involving such carriers;

(b) Collecting and disseminating useful and practical statistics regarding wages, earnings, fringe benefits and other labor and personnel data, and providing a forum for the discussion of industrial relations matters for all members, and at fees fixed by the Advisory Board for eligible carriers which do not become members;

(c) Determining the position of the member carriers on legislation related to or affecting labor relations and implementing such determinations in cooperation with the Air Transport Association to promote effective handling and to avoid duplication by AIRCO of the Air Transport Association apparatus, resources and expertise;

(d) Furnishing general labor law research;

(e) Representing member carriers in appearances before courts, administrative agencies and boards as authorized by the Advisory Board;

(f) Upon approval to do so by a two-thirds (⅔) majority vote of the Board of Directors, acting for one or more member carriers as representative in labor relations matters provided such member carrier or carriers shall have empowered AIRCO to act on its or their behalf in the specific matter by written power of attorney in a form prescribed by the Board, which power of attorney shall be revocable at any duly constituted meeting of the Board, except as provided in Article II(b) of these Articles;

(g) Advising and consulting with appropriate officials of each of the member carriers in order to pro-

mote uniformly good employee relations and to minimize grievances.

The carriers eligible to participate in the agreements are designated as (1) Trunk Carriers and Pan American, and (2) Regional, Local, Territorial and All-Cargo Carriers. The carriers listed under the respective headings, except for Trans Caribbean Airways, Inc., all hold certificates of public convenience and necessity for scheduled route operations.

The agreements became effective upon the execution thereof by nine "Trunk Carriers and Pan American" as such term is defined in the Articles of Association and will continue in effect until December 31, 1975, and thereafter from year to year subject to withdrawal provisions set forth in the Articles of Association. However, the agreements are terminable to the extent that they may be disapproved by the Board or to the extent that any conditions imposed by the Board may render their continued existence impracticable or of insufficient value to justify their cost.

A copy of the agreements are attached as an appendix hereto. The Board has decided to defer action pending receipt of comments thereon and to establish a procedural framework within which any such comments shall be filed. In this respect, we would expect interested persons to address themselves, in particular, to whether the agreements should be approved or disapproved pursuant to the standards set forth in section 412 of the Federal Aviation Act, and, if approved, for what duration and under what conditions. Procedurally, we shall allow (1) the parties to the agreements a period of 15 days from the date of this order during which to supply detailed justification for approval of the agreements in the public interest; (2) other interested persons a period of 15 days thereafter within

which to file answers; and (3) a period of 15 days thereafter for the filing of reply comments.

ACCORDINGLY, IT IS ORDERED THAT:

1. Action on Agreements CAB 22367 and 22368 be and it hereby is deferred;

2. The air carrier parties to Agreements 22367 and 22368 shall file, within 15 days from the date of this order, detailed comments justifying approval of the agreements pursuant to section 412 of the Act;

3. Other interested persons be and they hereby are afforded a period of 15 days thereafter, within which to file answers;

4. The airline parties to the agreements, and other interested persons, be and they hereby are afforded a period of 15 days after answers within which to file reply comments; [2] and

5. This order shall be served upon all certificated air carriers (both scheduled and supplemental); AIRCO, ATA, and NACA; the Departments of Justice, Transportation and Labor; Airline Dispatchers Association; Brotherhood of Railway, Airline and Steamship Clerks; Communication Workers of America; Flight Engineers International As-

[2] An original and 19 copies of all comments filed pursuant to ordering paragraphs 2, 3 and 4 hereof shall be filed with the Board's Docket Section. With regard to comments filed pursuant to paragraph 2 hereof, there shall be attached thereto a certificate of service pursuant to our Rule 8(e) [14 CFR 302.8(e)] indicating that service was made upon each person designated in ordering paragraph 5. In the case of answers the certificate of service shall indicate that such persons and all persons filing comments have been served; and in the case of reply comments the certificate of service shall indicate that all persons filing answers have been served. The Board requests that all comments be couched as specifically as possible, and that the use of unsupported or bare conclusory statements be avoided.

sociation; International Association of Machinists and Aerospace Workers; Transport Workers Union of America; Airline Pilots Association, International; Allied Pilots Association; Aircraft Mechanics Fraternal Association; Airline Employees Association; and International Brotherhood of Teamsters.

This order shall be published in the Federal Register.

By the Civil Aeronautics Board:

HARRY J. ZINK
Secretary

(SEAL)

Attachment

APPENDIX

AGREEMENT TO ESTABLISH THE AIRLINE INDUSTRIAL RELATIONS CONFERENCE

WITNESSETH:

WHEREAS, the parties are common carriers holding certificates of public convenience and necessity issued by the Civil Aeronautics Board (hereinafter referred to as "CAB") providing for the transportation by air of persons, property and mail; and

WHEREAS, the mutual interests of the parties call for the taking of all proper and lawful measures to bring about sound and reasonable economic conditions that will be of benefit to the air transport industry, its employees and the public; and

WHEREAS, the parties and other airlines have been subjected to, and are threatened in the future with, extreme and unreasonable demands made by representatives of certain of the classes and crafts of their employees, which demands have been exemplified by rejections on the part of employee collective bargaining representatives of the recommendations of Presidential Emergency Boards or presidential wage/price guidelines and which have been and are exemplified by whipsawing tactics on the part of such representatives between and among the airlines; and

WHEREAS, the competing institutional interests and rivalries between certain of the employee collective bargaining representatives, and between different locals of single international unions, have fostered increasingly unreasonable and spiraling demands upon the carriers in successive negotiations; and

WHEREAS, certain of the employee collective bargaining representatives represent employees on two or more carrirs, and in some cases many carriers, and use their multi-carrier representation in the formulation and implementation of bargaining strategies that result in excessive cost to the carriers of collective bargaining agreements; and

WHEREAS, it is in the carriers' interest and in the public interest that the parties hereto cooperate in the handling of labor relations and collective bargaining matters, and that the costs of providing air transportation, in the areas of wages, benefits, and working conditions, be kept commensurate with the reasonable cost to the public of receiving air transportation services;

NOW, THEREFORE, the parties hereby agree as follows:

I

The parties hereby establish and agree to become members of an Airline Industrial Relations Conference (hereinafter "AIRCO"), an unincorporated non-profit organization formed for the purposes set forth in Article III of the Articles of Association attached to this Agreement.

II

As soon as possible after the execution of this Agreement and the attached Articles of Association by nine (9) of the carriers designated in Article II(a) (1) of the Articles, the President of the Conference shall be selected in accordance with the provisions of Article VI of the Articles of Association. Any employment contract agreed upon shall be between AIRCO and the President. Each member carrier shall be jointly and severally liable for the obligations assumed by AIRCO under such employment contract, but

with recourse among the members on the basis of the assessment formula set forth in Article IX(b) of the Articles of Association.

III

All members recognize the necessity for free exchange of information relative to the elements which are necessary for intelligent and meaningful collective bargaining. To this end, shortly after assuming his office, the President shall meet with the Advisory Board provided for in Article VII of the Articles of Association for the purpose of establishing the ways and means through which such information shall be forwarded to AIRCO by the members and in turn communicated to all the members. The members agree to conform to the information reporting requirements as adopted by the Advisory Board.

IV

Nothing in this Agreement shall act in any manner to amend, modify or supersede the Mutual Aid Agreement entered into by some of the members, as amended from time to time.

V

This Agreement shall continue in effect until December 31, 1975 and thereafter from year to year, subject to the withdrawal provisions as contained in the Articles of Association.

VI

This Agreement shall become effective when executed by nine (9) of the carriers listed under the heading "Trunk

Carriers and Pan American" in Article II (a) of the Articles of Association attached.

VII

This Agreement shall be filed with the CAB and in the event it is disapproved in part, it shall terminate forthwith to the extent disapproved. This Agreement shall remain in full force and effect to the extent it is approved, and subject to any conditions imposed, by the CAB; provided, however, that AIRCO shall be dissolved if all members agree that any condition imposed by the CAB renders its continued existence impracticable or of insufficient value to justify its cost.

VIII

This Agreement shall become effective at such time as nine (9) of the air carriers designated as trunks and Pan American have executed this Agreement or counterparts thereof, and all such counterparts, taken together, shall constitute one original instrument.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the 17th day of March, 1971.

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Witness:

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Alaska Airlines

Appendix

ARTICLES OF ASSOCIATION OF THE AIRLINE INDUSTRIAL RELATIONS CONFERENCE

ARTICLE I

NAME AND LOCATION

This organization shall be an unincorporated voluntary association known as the AIRLINE INDUSTRIAL RELATIONS CONFERENCE (hereinafter referred to as "AIRCO"). The principal office and place of business of AIRCO shall be in Washington, D. C.

ARTICLE II

MEMBERSHIP AND WITHDRAWAL

(a) Any air carrier, as defined in Section 101 of the Federal Aviation Act of 1958, authorized to engage in scheduled air transportation under a certificate of public convenience and necessity issued pursuant to said Act is eligible to become a member of AIRCO. The members are those eligible air carriers that become signatories to these articles. The eligible carriers as of November 1, 1970 are listed below designated as (1) Trunk Carriers and Pan American, and (2) Regional, Local, Territorial and All-Cargo Carriers.

(1) Trunk Carriers and Pan American:

American Airlines, Inc.
Braniff International
Continental Air Lines, Inc.
Delta Air Lines, Inc.
Eastern Air Lines, Inc.
National Airlines, Inc.
Northeast Airlines, Inc.
Northwest Airlines, Inc.
Pan American World Airways, Inc.
Trans World Airlines, Inc.
United Air Lines, Inc.
Western Air Lines, Inc.

(2) Regional, Local, Territorial and All-Cargo Carriers:

Air West
Airlift International
Alaska Airlines, Inc.
Allegheny Airlines, Inc.
Aloha Airlines, Inc.
Aspen Airways, Inc.
Caribbean-Atlantic Airlines, Inc.
Chicago Helicopter Airways, Inc.
The Flying Tiger Line, Inc.
Frontier Airlines, Inc.
Hawaiian Airlines, Inc.
Kodiak Airways
Los Angeles Airways, Inc.
Mohawk Airlines, Inc.
New York Airways, Inc.
North Central Airlines, Inc.
Ozark Air Lines, Inc.
Piedmont Airlines
Reeve Aleutian Airways, Inc.
San Francisco & Oakland Helicopter Airlines, Inc.
Seaboard World Airlines, Inc.
Southern Airways, Inc.
TAG Airlines
Texas International Airlines, Inc.
Trans Caribbean Airways, Inc.
Western Alaska Airlines, Inc.
Wien Consolidated Airlines, Inc.

(b) (1) Except as provided below in this paragraph, a member may withdraw from AIRCO effective the end of any calendar year by notice in writing to the President not less than ninety (90) days prior to December 31 of said year, but said carrier shall continue to be liable for assessments, costs or other damages incurred by, or arising from decisions made by AIRCO during such member's period of membership. If negotiations have commenced as to which a member, pursuant to these Articles, has granted to AIRCO a power of attorney, such power shall not be revoked by the member until the negotiations covered by the power of attorney are concluded, whether or not a withdrawal notice has been given by the member, and in the event a withdrawal notice has been given, it shall not be effective until ninety (90) days after such negotiations are concluded. For the purposes of this section, negotiations shall be deemd to have been commenced 1) upon

tender to or by any member of notice pursuant to Section 6 of the Railway Labor Act, or 2) upon request for any voluntary reopening or modification by the member or a collective bargaining agent representing employees of the member assented to by the party of whom it is requested; and shall be deemed to have been concluded upon the execution of a collective bargaining agreement or agreements by the member or members and the collective bargaining representative of the employees involved, and ratification, if necessary.

(2) The execution of any unauthorized agreement by a member, or the termination of a power of attorney in violation of subsection (1) above without the unanimous consent of the Board of Directors, shall constitute an unauthorized withdrawal from AIRCO and shall subject that member to the damages prescribed in the by-laws. The term "unauthorized agreement" means any agreement or understanding negotiated by a member carrier on its behalf, or any modification thereof, negotiated or voluntarily agreed to in any manner except pursuant to the power of attorney granted by such member to AIRCO.

ARTICLE III

Objects and Purposes

The particular objects and purposes of AIRCO shall be:

(a) Planning and recommending a program to all member carriers for promoting a more consistent position on issues in future or pending labor negotiations involving such carriers;

(b) Collecting and disseminating useful and practical statistics regarding wages, earnings, fringe benefits and other labor and personnel data, and providing a forum for the discussion of industrial relations matters for all members, and at fees fixed by the Advisory Board for eligible carriers which do not become members;

(c) Determining the position of the member carriers on legislation related to or affecting labor relations and implementing such determinations in cooperation with the Air Transport Association to promote effective handling and to avoid duplication by AIRCO of the Air Transport Association apparatus, resources and expertise;

(d) Furnishing general labor law research;

(e) Representing member carriers in appearances before courts, administrative agencies and boards as authorized by the Advisory Board;

(f) Upon approval to do so by a two-thirds (⅔) majority vote of the Board of Directors, acting for one or more member carriers as representative in labor relations matters provided such member carrier or carriers shall have empowered AIRCO to act on its or their behalf in the specific matter by written power of attorney in a form prescribed by the Board, which power of attorney shall be revocable at any duly constituted meeting of the Board, except as provided in Article II (b) of these Articles;

(g) Advising and consulting with appropriate officials of each of the member carriers in order to promote uniformly good employee relations and to minimize grievances.

ARTICLE IV

Representation of Carriers by AIRCO

(a) AIRCO shall, in areas designated by the Board of Directors and subject to the specific provisions and limitations of the by-laws and powers of attorney executed by member carriers, act as the exclusive representative of member carriers in collective bargaining, mediation, arbitration and conciliation with such labor organizations as may be specified by each member carrier, and, upon the approval of the Advisory Board, may appear and act on behalf of member carriers in any judicial or administrative proceeding or before any local, state or federal legislative body.

(b) The performance of the functions described in paragraph (a) shall not suspend the functions performed by AIRCO for the members not so represented, as set forth in Article III and as approved and directed by the Board of Directors.

(c) In the event AIRCO is duly authorized to act for one or more carriers in collective bargaining, AIRCO shall promptly name a designee or designees to carry out the powers conferred, subject to such conditions and limitations as AIRCO may direct, and may change the designation with the approval of the Board of Directors.

ARTICLE V

Board of Directors

The policy of AIRCO shall be established by a body to be known as the Board of Directors. Each member in the group of carriers designated as the trunk carriers and

Pan American shall be represented on the Board of Directors by its chief executive officer or a designee appointed by written notice sent to each member of the Board to serve for twelve (12) consecutive months, and thereafter until a successor is appointed, in order to assure continuity. The regional local, territorial and all-cargo member carriers shall be represented on the Board of Directors by the chief executives of three of their number elected annually by vote of such members, but if less than three of such carriers are members, by the chief executives of the member or members. The President of AIRCO shall also be a member of the Board of Directors and shall act as its chairman.

ARTICLE VI

PRESIDENT

(a) The personnel and activities of AIRCO shall be under the administrative direction of a President who shall be selected by a two-thirds (⅔) majority vote of the Board of Directors. The President shall serve at the pleasure of the Board of Directors and his salary and other conditions of employment shall be fixed and may be changed from time to time by action of the Board, such period of service and salary and other conditions of employment being subject to the terms of any employment contract between the President and AIRCO.

(b) The President shall devote all of his time to the affairs of AIRCO and shall not have any other employment relationship. The President, operating within the limits of the operating budget provided for in Article IX, shall appoint such attorneys, counsel, statisticians,

economists, specialists and such other personnel as he feels are required to carry out the duties and functions of AIRCO.

ARTICLE VII

Advisory Board

There shall be a body to be known as the Advisory Board composed of the chief industrial relations officer of each member carrier having its chief executive officer or his designee on the Board of Directors, which shall, with the President, carry out the broad policies and objectives of AIRCO as established by the Board of Directors. The President shall also be a member of the Advisory Board and shall act as its chairman.

ARTICLE VIII

Meetings of Boards

(a) The Board of Directors shall meet at such times as may be determined and fixed by the Board. Special meetings may be held at the request of any chief executive officer or his designee who is a member of the Board upon fifteen (15) days' advance written notice to the President, or meetings may be called as may be necessary from time to time in the judgment of the President, at times and places fixed by the President after consultation with at least a majority of the members of the Board.

(b) The Advisory Board shall meet at such times as may be determined and fixed by the Advisory Board. Special meetings may be held at the request of two members of the Advisory Board or as may be necessary from time to time in the judgment of the President, at

times and places fixed by the President after consultation with a majority of the members of the Board. In addition, the Advisory Board shall schedule at least one meeting during each calendar quarter to which the chief industrial relations officers of all the member carriers shall be invited.

(c) A simple majority of the members of either Board shall constitute a quorum. All actions of either Board shall require a two-thirds (⅔) affirmative vote of the members; provided, however, that the President shall have an unrestricted proxy to vote for each member not present, except as provided in Articles XIII and XIV.

ARTICLE IX

FINANCE

(a) The Advisory Board, with the approval of the Board of Directors, shall establish an operating budget on a yearly basis and may, with the approval of the Board of Directors, supplement such budget from time to time to take care of activities of AIRCO not contemplated at the time the budget is approved. Expenditures shall be within the limits and for the purposes set forth in the budget and shall be made only upon authorization of the President.

(b) The general expenses of AIRCO shall be met by an assessment by the Board against all member air carriers prorated among the members on the basis of the ratio that each carrier's operating revenues bear to the total operating revenues of all member carriers for the twelve (12) months preceding the month in which such assessment is levied.

(c) Additional expenses necessary to handle collective bargaining for one or more member carriers or to handle special projects (including participation in judicial or administrative proceedings) in which the full membership does not have an interest, as determined by the Advisory Board, shall be borne equally by the member carrier or carriers who are party to such bargaining or special project, unless a different arrangement is agreed upon by such carriers in advance. The time of the President or other staff members that is devoted to representation of one or more members pursuant to power of attorney shall be charged on a pro rata basis to that carrier or those carriers and not to the membership as a whole, except to the extent the Board of Directors may determine that such functions are sufficiently in the interest of the general membership to warrant a charge thereto.

ARTICLE X

DAMAGES

(a) Any member which shall fail to comply in any respect with the Articles of Association or by-laws of AIRCO or with any agreement it has entered into with respect to AIRCO or with any lawful determination or assessment of its Board of Directors or Advisory Board shall have no voice in the affairs of AIRCO, and any representative of the said carrier serving on the Board of Directors or Advisory Board shall be suspended from the said position until such deficiency is removed, but said carrier shall continue to be liable for all assessments and its share of costs and expenses of, or incurred by, AIRCO. When a member which has so

violated its obligations comes into compliance, including the payment of any damages due under subparagraph (b) of this Article X, such carrier shall be restored to all its rights and shall have the right to participate fully in the affairs of AIRCO.

(b) Any member which withdraws from AIRCO at a time or in a manner other than provided in Article II (b) (1), or which enters into any unauthorized agreement within the meaning of Article II (b) (2), or which breaches or terminates a power of attorney in violation of these Articles, or which fails to comply with lawful determinations or assessments of the Board of Directors shall, upon a determination by the Board of Directors that a violation has occurred to which damages should attach, be liable to the other members of this Agreement for damages. The criteria for determination of damages shall be as prescribed in the by-laws.

ARTICLE XI

ARBITRATION

In the event any dispute should arise regarding the application or interpretation of this Agreement, including the amount of any damages to be paid hereunder, the dispute shall be referred to final and binding arbitration at the instance of any party to the Agreement. Unless the parties to the Agreement have previously agreed otherwise, or the parties involved in the dispute otherwise agree within twenty days after receipt of the notice and demand for arbitration, the arbitrators shall be selected and the arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

Judgment upon any award rendered hereunder may be entered in any court having jurisdiction.

ARTICLE XII

General

(a) These Articles shall not be deemed to preclude agreements between or among two or more members to act together in collective bargaining, at their own expense, and upon terms agreed between them, provided no such agreement shall be entered into by any member that conflicts with the objects and purposes of these Articles.

(b) AIRCO shall have the authority to perform any and all lawful acts necessary or proper for the purposes aforesaid, acting at all times in accordance with the Railway Labor Act, the Federal Aviation Act, and any other applicable state or federal laws.

ARTICLE XIII

Adoption of By-Laws

The Board of Directors shall adopt by-laws for the conduct of its affairs and such by-laws may be amended or repealed by a two-thirds (⅔) majority vote of the members of the Board of Directors present at a meeting, provided the notice of the meeting sets forth the proposed amendment or repeal.

ARTICLE XIV

Amendment

These Articles of Association may be amended at any meeting of the Board of Directors by a unanimous vote of

the members present at the meeting, provided the notice of the meeting includes the text of the proposed amendment.

ARTICLE XV

Effective Date

These Articles of Association shall become effective at such time as nine (9) of the air carriers designated as trunks and Pan American have executed these Articles of Association or counterparts thereof, and all such counterparts, taken together, shall constitute one original instrument.

In Witness Whereof, we acknowledge these Articles of Association and have caused our corporate names to be signed and our corporate seals to be affixed and attested.

.....

.....
Witness:

APPENDIX E

CAB Order 71-11-23 Issued November 3, 1971

Appendix E

CAB Order 71-11-23 issued November 3, 1971

Airline Industrial Relations Conference Investigation

Order 71-11-23

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD, WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board at its office in Washington, D. C. on the 3rd day of November, 1971

Docket 23267

Agreements CAB 22367 and 22368

ORDER

By Order 71-4-167 the Board established a procedural framework for the submission of comments concerning the two agreements described therein.[1] In response to this order the Airline Industrial Relations Conference (the Conference) and its members submitted opening and closing comments. Opposition comments were filed by the Flight Engineers' International Association; by the Air Line Dispatchers Association, the Brotherhood of Railway and Airline Clerks, the International Association of Machinists and Aerospace Workers, and the Transport Workers Union of America (jointly); by the Allied Pilots Association and the Aircraft Mechanics Fraternal Association (jointly); by the Air Line Employees Association, International; and by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. The Air Line Pilots Association submitted a motion for an evidentiary hearing.

[1] The agreements creating the Airline Industrial Relations Conference have been amended three times since Order 71-4-167. The sole purpose of one amendment was to substitute the words "the Conference" for the word "Airco" whenever the latter appeared in the agreements. By two separate amendments Ozark Air Lines, Inc. and Texas International Airlines, Inc. were made parties to the agreements.

After considering the importance of the proposed agreements, the complexity of the questions involved, the widespread opposition to the agreements and the multiple requests for a hearing from the opposition parties,[2] the Board has concluded that the matter should be set for expedited hearing.

In our view, the following questions, among others, are relevant in determining whether the agreements are consistent with the public interest and do not violate any provisions of the Act, and should be considered more fully in the hearing:

1. Do the agreements by themselves, or in conjunction with the operation of the Mutual Aid Pact, violate any applicable provisions of the Railway Labor Act?[3]

2. Will the operation of the agreements improve or impair labor-management relations in the industry?

3. Will the agreements discriminate in restraint of trade against certificated carriers not party to the agreements, or in any way violate antitrust laws?[4]

4. What effect, if any, will the agreements have upon the bargaining balance between labor and management?

5. What are the implications and effects of Phase II of the Wage-Price Freeze as it pertains to these agreements?

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[2] In addition to the motion for a hearing submitted by the Air Line Pilots Association, requests for a hearing were made by the Air Line Dispatchers Association, *et al.* and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers.

[3] Agreement CAB 21445, Docket 9977.

[4] As an issue relevant to this question, is the present tiered system of representation on the Board of Directors (one director for each trunk and Pan American, and up to three directors for all other certificated carriers combined) in the public interest?

The Conference and its members individually, together with the objecting unions, will be made parties to the investigation.

ACCORDINGLY, IT IS ORDERED THAT:

1. Agreements CAB 22367 and 22368 (Docket 23267) be and they hereby are set for expedited hearing before an examiner of the Board at a time and place to be hereafter designated;

2. The Airline Industrial Relations Conference and each of its members, and each union named on pages 1-2, *supra*, be and they hereby are made parties to this proceeding and each shall be served with a copy of this order; and

3. Participation in this proceeding by the Departments of Justice, Labor and Transportation is invited. In order to facilitate that participation, each of those Departments is hereby made a party to this proceeding and shall be served with a copy of this order.

This order shall be published in the Federal Register.

By the Civil Aeronautics Board:

HARRY J. ZINK
Secretary

(SEAL)

APPENDIX F

CAB Order 73-9-15 issued September 6, 1973

Appendix F

CAB Order 73-9-15 issued September 6, 1973

Airline Industrial Relations Conference Investigation Order 73-9-15

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 23267

Agreement CAB 22368-A2

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 6th day of September, 1973

ORDER OF APPROVAL

In Order 73-6-96, dated June 22, 1973 the Board approved, subject to certain conditions, the agreement to establish the Airline Industrial Relations Conference (Agreement CAB 22367) and the Articles of Association of that Conference (Agreement CAB 22368). Among the conditions of that order were the requirements (1) that all provisions of the agreement relating to irrevocable powers of attorney be eliminated; (2) that all provisions relating to damages for the unauthorized withdrawal from the Conference or for otherwise causing a breach or termination of such powers of attorney be excluded; (3) that the tiered system of representation on the Board of Directors of the Conference be replaced by a system in which each member carrier of Air Conference would have an equal vote in selecting the Board of Directors and each of the classes of Air Conference members would be represented on the Air Conference Board of Directors, unless all of the members

of any class elect not to be represented on the Board for any particular year; and (4) that all amendments relating to the conditions be filed with the Board not later than 30 days after the effective date of Order 73-6-96.

The Conference Board of Directors, by resolution, amended the Articles of Association so as to conform to the requirements of the conditions established in that order. These amendments (Agreement CAB 22368-A2) provide for (1) the elimination of all provisions in the agreements pertaining to irrevocable powers of attorney; (2) the voluntary withdrawal of a member from the Conference at the end of a calendar year, regardless of an effective executed power of attorney, by giving notice in writing to the President not less than 90 days prior to December 31 but such carrier shall continue to be liable for assessments, costs or other damages incurred during membership; (3) the replacement of the tiered system of representation with the establishment of a new system in which the vote of each member carrier in selecting the Board of Directors will be afforded equal weight and there will be at least one member on the Board from each of the 3 classes established (trunk, local service, and all other carriers) unless all of the members of the class choose not to be represented for that given year; and (4) the creation of a new Board of Directors consisting of the President of the Conference and 12 persons elected annually by a vote of the membership of the entire conference.

In light of Order 73-6-96 and the amendments of the Articles of Association filed pursuant to the conditions established therein, it is found that Agreement CAB 22368-A2, as it amends Agreement CAB 22368, is not adverse to the public interest nor in violation of the Act and should, therefore, be approved.

Airline Industrial Relations Conference Investigation
Order 73-9-15

ACCORDINGLY, IT IS ORDERED THAT:

1. Agreement CAB 22368-A2 be and it hereby is approved; and

2. Conditions (b) through (h) stated in ordering paragraph 1 of Order 73-6-96 shall remain in effect.

By the Civil Aeronautics Board:

EDWIN Z. HOLLAND
Secretary

(SEAL)

APPENDIX G

Statutory Provisions Involved:

1. Railway Labor Act:

Section 151:

§ 151. Definitions

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

* * * * * * * * * *

Section 151a:

§ 151a. General purposes

The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

* * * * * * * * * *

Section 152, First-Fourth:

§ 152. General duties—Duty of carriers and employees to settle disputes

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purpose of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purpose of this chapter need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. . . .

* * * * * * * * * *

Section 181:

§ 181. Application of sections 151, 152, and 154-163 to carriers by air

All of the provisions of sections 151, 152, and 154-163 of this title are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers,

subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

• • • • • • • • • • •

2. Federal Aviation Act:

Section 1302:

§ 1302. Consideration of matters in public interest by Board

In the exercise and performance of its powers and duties under this chapter, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(e) The promotion of safety in air commerce; and

(f) The promotion, encouragement, and development of civil aeronautics.

• • • • • • • • • • •

Section 1324(a):

§ 1324. General powers and duties of the Board

(a) The Board is empowered to perform such acts, to conduct such investigations, to issue and amend such orders, and to make and amend such general or special rules, regulations, and procedure, pursuant to and consistent with the provisions of this chapter, as it shall deem necessary to carry out the provisions of, and to exercise and perform its powers and duties under, this chapter.

• • • • • • • • • •

Section 1371(k)(4):

§ 1371. Certificate of public convenience and necessity

(k)(4) It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with sections 181-188 of Title 45.

• • • • • • • • • •

Section 1382(b):

§ 1382. Pooling and other agreements; filing; approval by Board

(b) The Board shall by order disapprove any such contract or agreement, whether or not previously approved by it, that it finds to be adverse to the public interest, or in violation of this chapter, and shall by order approve any such contract or agreement, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this chapter; except that the Board may not, approve any contract or agreement between an air carrier not directly engaged in the operation of aircraft in air transportation and a common carrier subject to the Interstate Commerce Act, as amended, governing the compensation to be received by such common carrier for transportation services performed by it.

APPENDIX H

Amendments to Article of Association of AIRCON

Appendix H

Amendments to Article of Association of AIRCON

Amendments to the Articles of Association of the Airline Industrial Relations Conference

RESOLVED, That effective July 22, 1973, the Articles of Association of the Airline Industrial Relations Conference are hereby amended as follows:

1. *Article II(a):* The last sentence of the text and the lists of carriers which follow immediately thereafter are deleted, and the following material is substituted therefor:

> "The eligible carriers as of July 1, 1973, are listed below in three classes designated as (1) Trunk Carriers (Domestic and International), (2) Local Service Carriers, and (3) All Other Carriers.
>
> "(1) *Trunk Carriers (Domestic and International):*
>
> American Airlines, Inc.
> Braniff Airways, Inc.
> Continental Air Lines, Inc.
> Delta Air Lines, Inc.
> Eastern Air Lines, Inc.
> National Airlines, Inc.
> Northwest Airlines, Inc.
> Pan American World Airways, Inc.
> Trans World Airlines, Inc.
> United Air Lines, Inc.
> Western Air Lines, Inc.
>
> "(2) *Local Service Carriers:*
>
> Allegheny Airlines, Inc.
> Frontier Airlines, Inc.
> Hughes Air Corp., d/b/a Air West
> North Central Airlines, Inc.
> Ozark Airlines, Inc.

Amendments to the Articles of Association of the Airline Industrial Relations Conference

Piedmont Aviation, Inc.
Southern Airways, Inc.
Texas International Airlines, Inc.

"(3) *All Other Carriers:*
Airlift International, Inc.
Alaska Airlines, Inc.
Aloha Airlines, Inc.
Aspen Airways, Inc.
Chicago Helicopter Airways, Inc.
The Flying Tiger Line, Inc.
Hawaiian Airlines, Inc.
Kodiak-Western Alaska Airlines, Inc.
Los Angeles Airways, Inc.
New York Airways, Inc.
Reeve Aleutian Airways, Inc.
SFO Helicopter Airlines, Inc.
Seaboard World Airlines, Inc.
Wien Consolidated Airlines, Inc.
Wright Air Lines, Inc."

2. *Article II(b):* The subsection designation "(1)" and the first seven words which follow that designation are deleted, and the section is to begin "A member may withdraw. . . ." All of former subsection (1) after the first sentence thereof, and all of subsection (2) are deleted.

3. *Article III(f):* The last eight words are deleted, and the comma after the word "Board" which immediately precedes the deleted words is replaced by a period.

4. *Article V:* The entire Article is deleted, and the following material is substituted therefor:

Amendments to the Articles of Association of the Airline Industrial Relations Conference

"Board of Directors

The policy of the Conference shall be established by a body to be known as the Board of Directors. The Board of Directors shall be comprised of the President of the Conference, who shall act as its chairman, and 12 persons elected annually by vote of the membership. In any such election the vote of each member carrier shall be accorded equal weight. Each Director must be the chief executive officer of a member carrier or his designee nominated prior to election to serve in place of the chief executive officer. The Board of Directors shall include at least one chief executive officer or designee of a carrier from each of the classes of member carriers enumerated in Article II(a), provided, however, that this requirement shall not apply to a class during a particular year if all the members belonging to the class choose not to be represented on the Board of Directors for that year."

5. *Article X (b):* In the first sentence, the words "or which enters into any unauthorized agreement within the meaning of Article II(b)(2), or which breaches or terminates a power of attorney in violation of these Articles," which follow the first clause of the subsection, are deleted.

APPENDIX I

Bylaws of AIRCON:

Appendix I

Bylaws of AIRCON:

1. Bylaws of AIRCON as proposed

ARTICLE I

MEMBERSHIP

Section 1. *Eligibility.* Any air carrier, as defined in Section 101 of the Federal Aviation Act of 1958, authorized to engage in scheduled air transportation under a certificate of public convenience and necessity issued pursuant to said Act, shall be eligible for membership in the Conference.

Section 2. *Admission to Membership.* Any carrier eligible for membership which desires to become a member of the Conference may become a member by executing a copy of the Agreement and the Articles of Association of the Conference.

Section 3. *Duration of Membership.* Once obtained, membership shall be continuous until dissolution of the Conference or withdrawal of the carrier from the Conference as provided in the Articles of Association.

Section 4. *Rights of Members.* Each trunk carrier member, as defined in the Articles of Association, and Pan American World Airways, Inc., if a member, shall have the right to designate one director to represent it on the Board of Directors and to have its chief industrial relations officer represent it on the Advisory Board. Each regional, local, territorial, or all-cargo carrier member shall have the right to vote on the designation of three such carriers which shall each designate a director to represent all of such carriers on the Board of Directors and the chief industrial relations officers of which shall represent all of such carriers on the

Advisory Board. In addition, each member shall be entitled to have its chief industrial relations officer attend regular quarterly meetings of the Advisory Board.

Section 5. *Obligations of Members.* Each member shall be bound by the terms and conditions set forth in the Articles and the Bylaws. Each member is absolutely obligated to pay all dues, fees, assessments, and damages levied against it in accordance with the Articles and the Bylaws. Such fees, dues, assessments, and damages shall become a binding obligation on each member when they become due.

Section 6. *Withdrawal from Membership.* Any member shall have the right to withdraw from membership in the Conference effective the end of any calendar year by notice in writing to the President of the Conference not less than ninety (90) days prior to December 31 of said year, subject to the provisions of Article II(b)(1) of the Articles of Association.

Section 7. *Unauthorized Withdrawal from Membership.* In the event that any member who has granted to the Conference a power of attorney to act as its exclusive representative in collective bargaining terminates such power of attorney in violation of Article II(b)(1) of the Articles of Association without the unanimous consent of the Board of Directors, or executes an unauthorized agreement as defined in Article II(b)(2) of the Articles of Association, such member shall be deemed to have withdrawn from membership without authorization, and shall be readmitted to membership only upon a unanimous vote of the Board of Directors and upon such conditions as may be determined by the Board of Directors.

Section 8. *Suspension from Membership.* Any member which fails to comply in any respect with the Articles of Association or Bylaws of the Conference or with any agreement it has entered into with respect to the Conference or with any lawful determination or assessment of the Board of Directors or Advisory Board shall have no voice in the affairs of the Conference, and any representative of such member serving on the Board of Directors or Advisory Board shall be suspended from said position until such deficiency is removed, but such member shall continue to be liable for all assessments and its share of costs and expenses of, or incurred by, the Conference. When a member who has so violated its obligations comes into compliance, including the payment of any damages due under Article V hereof, such carrier shall be restored to all its rights and shall have the right to participate fully in the affairs of the Conference.

Section 9. *Declaration of Unauthorized Withdrawal or Suspension.* Subject to the appeal rights hereinafter provided, the President shall declare, in writing, the unauthorized withdrawal of any member who, in his opinion, has withdrawn without authorization as provided in Section 7 of this Article I, and shall declare, in writing, the suspension of any member who, in his opinion, has subjected itself to suspension as provided in Section 8 of this Article I. A member declared by the President pursuant hereto to have withdrawn without authorization or to have been suspended shall be entitled to appeal such declaration to the Board of Directors and be heard in connection therewith. The Board of Directors shall affirm or rescind the declaration, and written notice of the Board of Directors' action shall be served upon the member. The director designated by such member shall not be disqualified from participating or voting in appeal proceedings under this section.

ARTICLE II

BOARD OF DIRECTORS

Section 1. *Composition and Tenure.* The Board of Directors shall consist of the President of the Conference; the chief executive officer, or his designee, of each member from among the trunk carriers and Pan American; and the chief executive officers, or designees, of three of the members from among the regional, local, territorial, or all-cargo carriers, these six individuals to be chosen annually for a one-year term commencing April 15 by all of the members from among the regional, local, territorial, or all-cargo carrier members, each such member having one vote. The term of the President as a director shall be co-extensive with his service as President. The chief executive officers of carriers entitled to designate a director to represent them exclusively shall be members of the Board of Directors unless and until they designate, by written notice to all other directors, another director to serve in their place, and a director so designated shall serve for a term of one year from the date of such designation.

Section 2. *Chairman.* The President of the Conference shall serve as Chairman of the Board of Directors.

Section 3. *Organization of Meetings.* The President of the Conference shall preside at every meeting of the Board. In the absence of the President, meetings of the Board shall be presided over by a temporary chairman elected from the membership of the Board by a majority vote of the directors present at such meeting. The Secretary-Treasurer of the Conference shall serve as Secretary of the meetings. In the absence of the Secretary-Treasurer, a temporary secretary, selected by the Board, shall act as Secretary.

Section 4. *Regular Meetings.* Regular meetings of the Board of Directors shall be held at such times and places as may be fixed by the Board.

Section 5. *Special Meetings.* Special meetings of the Board of Directors shall be held when called by the President, at times and places fixed by the President after consultation with at least a majority of the members of the Board of Directors, or when called by a director, upon fifteen (15) days' advance, written notice to the President, at a time and place specified by the President after consultation with at least a majority of the directors. Notice of special meetings shall be mailed or given personally to each director by the President at least ten (10) days prior to the date on which the meeting is to be held. Such notice shall state the time, day, and place of the meeting, but, unless otherwise specifically provided in the Bylaws, need not state the purpose or purposes for which it is called.

Section 6. *Quorum and Manner of Acting.* A majority actually present of the members of the Board of Directors shall constitute a quorum for the transaction of business and for this purpose proxies shall not be counted. Each director shall have one vote. An affirmative vote of a two-thirds (⅔) majority of the members of the Board shall be required for all actions of the Board; provided, however, that except as to action under Article XIII or Article XIV of the Articles of Association, the President shall have an unrestricted proxy to vote on behalf of each member not present at any meeting at which there is a quorum.

Section 7. *Voting By Mail.* The Board of Directors may act by a mail-ballot vote on any matter as to which such

mail-ballot vote has been specifically authorized by a prior resolution of the Board.

ARTICLE III

ADVISORY BOARD

Section 1. *Composition and Tenure.* The Advisory Board of the Conference shall consist of the President of the Conference and the chief industrial relations officer of each member having its chief executive officer or his designee on the Board of Directors of the Conference. The term of the President on the Advisory Board shall be co-extensive with his service as President. The terms of the advisors representing members from among the trunk carriers and Pan American shall be co-extensive with the period of membership of each such member in the Conference, provided, however, that in the event any such advisor ceases to be the chief industrial relations officer of the carrier which he represents, he shall cease to be an advisor, and he shall be replaced on the Advisory Board by the new chief industrial relations officer of such carrier. The terms of the advisors representing carriers from among the regional, local, territorial, or all-cargo carriers shall be co-extensive with the terms of the directors designated by the carriers of which such advisors are the chief industrial relations officers.

Section 2. *Chairman.* The President of the Conference shall serve as Chairman of the Advisory Board.

Section 3. *Organization of Meetings.* The President of the Conference shall preside as Chairman at every meeting of the Board. In the absence of the President, meetings of the Board shall be presided over by a temporary chairman

elected from the membership of the Board by a majority vote of the advisors present at such meeting. The Secretary-Treasurer of the Conference shall serve as Secretary of the meetings. In the absence of the Secretary-Treasurer, a temporary secretary, selected by the Advisory Board, shall act as Secretary.

Section 4. *Regular Meetings.* Regular meetings of the Advisory Board shall be held at such times and places as may be fixed by the Board.

Section 5. *Special Meetings.* Special meetings of the Advisory Board shall be held when called by the President, at times and places fixed by the President after consultation with at least a majority of the members of the Advisory Board, or when requested in writing by two or more advisors, at times and places specified by the President after consultation with at least a majority of the advisors. Notice of such a special meeting shall be mailed or given personally to each advisor by the President at least ten (10) days prior to the date on which the meeting is to be held. Such notice shall state the time, day, and place of the meeting, but, unless otherwise specifically provided in the Bylaws, need not state the purpose or purposes for which it is called.

Section 6. *Quarterly Meetings.* There shall be at least one meeting of the Advisory Board during each calendar quarter to which the chief industrial relations officers of all the members of the Conference shall be invited.

Section 7. *Quorum and Manner of Acting.* A majority actually present of the members of the Advisory Board shall constitute a quorum for the transaction of business and for this purpose proxies shall not be counted. An affirmative

vote of a two-thirds (⅔) majority of the members of the Board shall be required for all actions of the Board; provided, however, that the President shall have an unrestricted proxy to vote on behalf of each member not present at any meeting at which there is a quorum.

ARTICLE IV

OFFICERS

Section 1. *Election, Number, and Qualifications.* The officers of the Conference shall be elected by the Board of Directors and shall consist of a President, an Executive Vice-President, a Secretary-Treasurer and such other officers as may be designated by the Board. All such officers shall be full-time employees of the Conference and while employed by the Conference shall not engage in other active employment.

Section 2. *President.* The President shall be the chief executive officer of the Conference and shall act as Chairman of the Board of Directors and of the Advisory Board. He shall exercise supervision over the operations of the Conference, direct its personnel and activities, and take all actions necessary or appropriate to fulfill the Objects and Purposes of the Conference as set forth in its Articles and shall exercise the powers and discharge the duties imposed on him by the Articles, the Bylaws, or the direction of the Board of Directors. He shall transact all such business as pertains to his office and perform all acts incidental to his office.

Section 3. *Executive Vice-President.* In the event the office of President is vacant, the Executive Vice-President

shall have the powers and perform the duties of the President, except that he shall not exercise the powers of the President as provided in Articles II and III hereof. The Executive Vice-President also shall perform such other duties as may, from time to time, be assigned to him by either the Board of Directors or the President.

Section 4. *Secretary-Treasurer.* The Secretary-Treasurer shall:

(a) Keep the minutes of all meetings of the Board of Directors and the Advisory Board;

(b) See that all notices are duly given in accordance with the provisions of the Articles and Bylaws;

(c) Keep a register of the name and post office address of each member of the Conference and the names and addresses of the members of the Board of Directors and the Advisory Board, which shall be furnished to the Secretary at his request by the member, director, or advisor, and make all proper changes in such register, retaining and filing his authority for all such entries;

(d) See that books, reports, statements, certificates, and all other documents and records required by the Articles and Bylaws are properly kept and filed.

(e) In general, perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him by the Board of Directors or the President.

(f) Have the charge and custody of, and be responsible for, all funds of the Conference and deposit

all such funds in the name of the Conference in such banks, trust companies, or other depositaries as may be selected in accordance with the provisions of any rules in this regard which may be adopted by the Conference.

(g) Receive, and give receipts for, moneys due and payable to the Conference from any source whatsoever.

(h) In general, perform all the duties incident to the office of Treasurer and such other duties as may, from time to time, be assigned to him by the Board of Directors or the President.

ARTICLE V

DAMAGES

Any member which withdraws from the Conference without authorization, as provided in Section 7 of Article I hereof, or which otherwise breaches or terminates a power of attorney in violation of these By-Laws, or which fails to comply with lawful determinations or assessments of the Board of Directors shall, upon a determination by the Board of Directors that such act or omission appears to have caused direct and immediate monetary loss to the Conference or one of its members, or jeopardizes pending negotiations of any member of the Conference, or appears likely to affect the present or future effectiveness of the Conference, and that the said member should respond in damages for such act or omission, be liable for actual damages provable by the Conference or by any member of the Conference as having been caused, in whole or in part, by such act or omission, and for such other damages as

may be specified in any applicable power of attorney executed by such member and approved by the Board of Directors.

ARTICLE VI

Amendment of Bylaws

The Bylaws of the Conference may be amended or repealed by an affirmative vote of two-thirds (⅔) of the members of the Board of Directors present at a meeting duly called and held, provided that all members of the Board of Directors shall have been given fifteen (15) days' advance written notice of the meeting setting forth the proposed amendment or repeal.

2. Bylaws of AIRCON as amended

Amendments to the Bylaws of the Airline Industrial Relations Conference

RESOLVED, That effective July 22, 1973, the Bylaws of the Airline Industrial Relations Conference are hereby amended as follows:

1. *Article I, Section 4.*: The entire section is deleted, and the following material is substituted therefor:

> "*Section 4. Rights of Members.* Each member carrier shall have the right to an equal vote in electing members of the Board of Directors. Each class of member carriers shall have the right to be represented on the Board of Directors by the chief executive officer or designee of at least one carrier belonging to such class, and to be represented on the Advisory Board by the chief industrial relations officer of the same carrier, unless all members of the class choose not to be represented on the Board of Directors for a given year. In addition, each member carrier shall be entitled to have its chief industrial relations officer attend regular quarterly meetings of the Advisory Board."

2. *Article I, Section 6.*: In place of "Article II (b) (1)," read "Article II (b)."

3. *Article I, Section 7.*: The entire section is deleted.

4. *Article I, Section 9.*: In the first sentence, the words "shall declare, in writing, the unauthorized withdrawal of any member who, in his opinion, has withdrawn without authorization as provided in Section 7 of this Article I, and . . . ," which follow the word "President," are deleted. In the second sentence, the words "to have withdrawn without authorization . . . ," which follow the eighth word of the sentence, are deleted.

Amendments to the Bylaws of the Airline Industrial Relations Conference

5. *Article II, Section 1.*: The entire section is deleted, and the following material is substituted therefor:

BOARD OF DIRECTORS

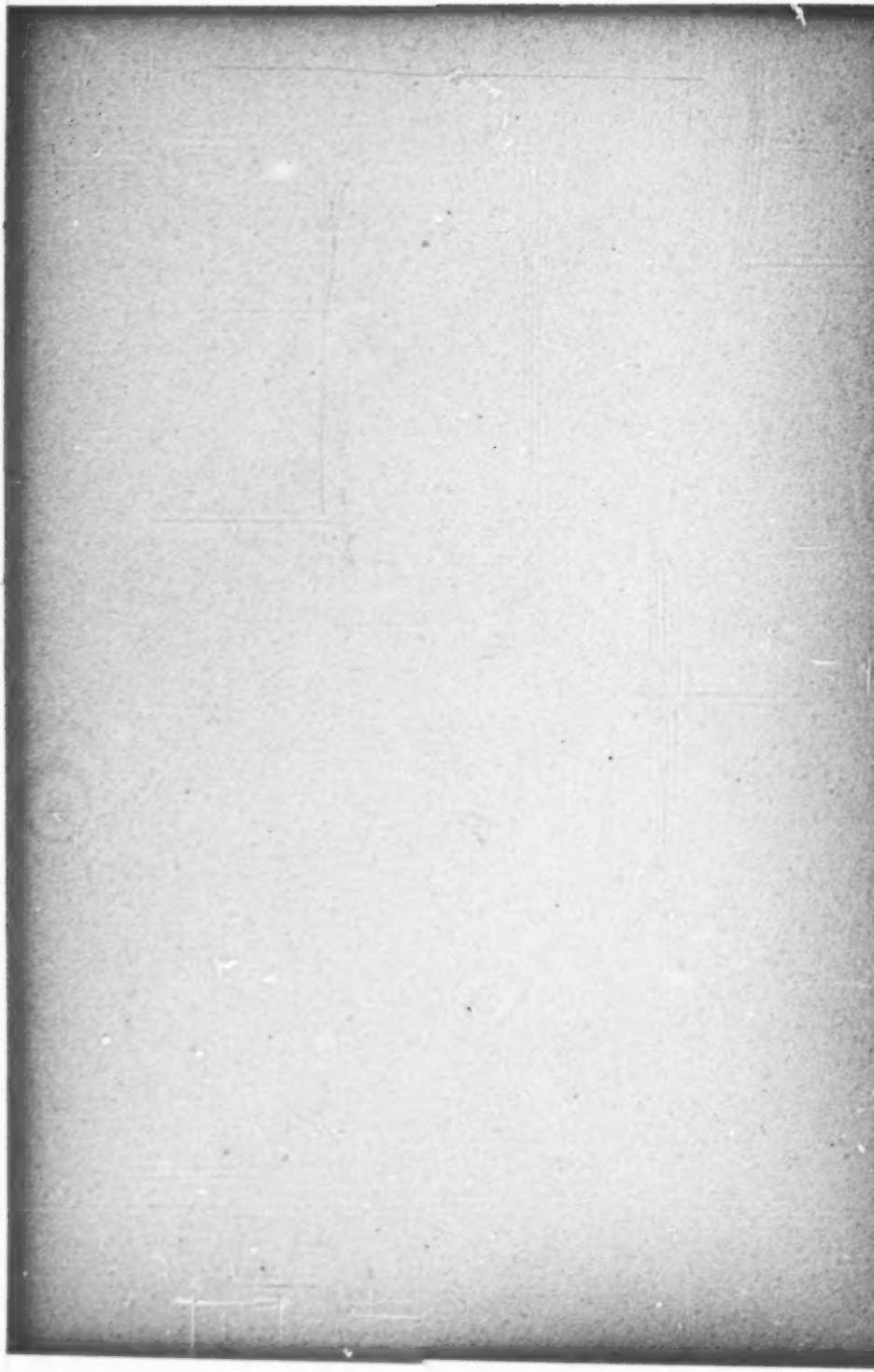
"*Section 1. Composition and Tenure.* The Board of Directors shall consist of the President of the Conference and 12 other persons elected annually by the member carriers. Each elected member of the Board shall be the chief executive officer of a member carrier or his designee nominated prior to election to serve in place of the chief executive officer. Each class of member carriers shall be entitled to be represented on the Board of Directors by the chief executive officer or designee of at least one member carrier belonging to the class, unless all members of such class choose not to be represented for a given year. The term of the President as a Director shall be coextensive with his service as President. The term of each of the elected Directors shall be one year."

6. *Article III, Section 1.* "The portion of the third sentence that precedes the clause beginning "provided, however," is deleted, and the following material is substituted therefor:

"The terms of the advisors shall be one year, ..."

The last sentence of the section is deleted.

7. *Article V*: In the first sentence the words "withdraws from the Conference, without authorization, as provided in Section 7 of Article I hereof, or which otherwise breaches or terminates a power of attorney in violation of these Bylaws, or which . . . ," which follow the third word in the sentence, are deleted.



No. 74-1174

APR 16 1975

MICHAEL RODAK, JR.,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

AIR LINE DISPATCHERS' ASSOCIATION, *et al.*,
Petitioners,

v.

CIVIL AERONAUTICS BOARD, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF AIRLINE RESPONDENTS IN OPPOSITION

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April 16, 1975

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IN THE

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AIR LINE DISPATCHERS' ASSOCIATION, *et al.*,
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Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF AIRLINE RESPONDENTS IN OPPOSITION

QUESTION PRESENTED

Whether the Court of Appeals was correct in affirming a Civil Aeronautics Board decision approving agreements among airlines establishing an organization to coordinate their separate collective bargaining negotiations.

STATEMENT

Petitioners seek review of a Judgment of the Court of Appeals affirming *per curiam* a unanimous decision of the Civil Aeronautics Board which approved two agreements among certificated air carriers establishing the Airlines Industrial Relations Conference ("AIR Conference").[1]

AIR Conference is an industrial relations organization designed to provide information and services to member carriers in connection with their collective bargaining activities and related matters. A principal purpose of the organization is to coordinate the collective bargaining conducted separately by individual member carriers in negotiations with national labor unions representing employees of many different carriers at the same time. A premise underlying the formation of AIR Conference was that the airlines had been disadvantaged in collective bargaining by their lack of coordination in dealing with centralized multi-carrier unions, and that this disadvantage has contributed to the great success of airline labor unions at the bargaining table over the years.[2]

The AIR Conference agreements contemplate coordination of bargaining through discussion of issues

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[1] The agreements are the Agreement to Establish AIR Conference (Appendix D pp. 94a-97a) and the Articles of Association of AIR Conference (Appendix D pp. 98a-109a), as modified by Amendments effective July 22, 1973 (Appendix H). At present, 21 carriers are members of AIR Conference: Air New England, Alaska, Aloha, American, Continental, Eastern, Flying Tiger, Frontier, Hawaiian, Hughes Airwest, National, North Central, Northwest, Ozark, Piedmont, Reeve Aleutian, Texas International, Trans World, United, Western, and Wien Air Alaska.

[2] The record shows that airline wage rates are higher than and have been rising faster than those of any other non-seasonal industry. (JAE 581, 583, 584, 586-8).

and strategies and by the free exchange of pertinent information among the members. The agreements also authorize the Conference to act as a bargaining agent in a particular negotiation for one or more member carriers, at the carrier's request, pursuant to a power of attorney executed by the represented carrier for the negotiation in question. As originally drafted, the agreements provided that such a power of attorney, once executed and accepted by AIR Conference, could not be revoked until the negotiation to which it applied had been concluded, and they also provided for damages to carriers injured by a prohibited revocation. These provisions for irrevocability enforced by damages were eliminated after the Board concluded that they should not be approved because they could permit AIR Conference to refuse a settlement which a carrier wished to accept and because the carrier might thereby be prevented from fulfilling its obligation under the Railway Labor Act to exert every reasonable effort to reach agreement. (Appendix C, pp. 34a-43a). Under the agreements as modified, a carrier represented by AIR Conference in a negotiation may dismiss the Conference as bargaining agent at any time, and AIR Conference has no authority to dictate the collective bargaining policies or practices of any carrier.

The AIR Conference agreements were submitted to the CAB pursuant to Section 412 of the Federal Aviation Act, 49 U.S.C. § 1382(a), which requires filing of all agreements among air carriers involving "cooperative working arrangements" affecting air transportation. Under Section 412, the Board is required to approve any agreement submitted thereunder which it does not find to be adverse to the public interest or in violation of the Federal Aviation Act (which provides

inter alia that certificated air carriers must comply with the provisions of the Railway Labor Act, 49 U.S.C. § 1371(k)(4)). In approving the Conference agreements over union opposition, the Board adopted the findings and conclusions of its Administrative Law Judge that the agreements as modified did not violate any law and had no consequences adverse to the public interest. (Appendix B.)

After full briefing and oral argument in the Court of Appeals, that Court (per Wright, Robb, and Second Circuit Senior Judge Moore) unanimously affirmed the Board's order *per curiam,* concluding that the factual findings were supported by substantial evidence in the record and the legal conclusions were free from reversible error. (Appendix A). The instant Petition is brought by one group among the several union parties who opposed approval of AIR Conference before the Board. [3]

REASONS FOR DENYING THE WRIT

The Petition does not advance any reason why Supreme Court review should be warranted for the Court of Appeals' *per curiam* affirmance of a routine CAB regulatory order. There is no conflict with any decision of this Court and no conflict among the Circuits, which are unanimous that coordination of separate bargaining activities through a common bargaining agent is consistent with the principles of the labor regulatory statutes. No far-reaching question of statu-

[3] The Air Line Pilots Association, which was a party to the petition for review in The Court of Appeals, has not sought certiorari. The Teamsters and the jointly represented Allied Pilots Association and Aircraft Mechanics Fraternal Association did not appeal the Board's ruling after the provisions for an irrevocable power of attorney enforced by damages were eliminated.

tory interpretation is presented, but only a question of the application of well-understood statutory principles to particular facts, and on that question the Petition does not cite any judicial authority at all.[4] The Petition contains nothing to suggest that the issues it raises are otherwise important or controversial.

The only questions raised in the Petition are those concerning the legality under the Railway Labor Act of the authority given to AIR Conference to act as a bargaining agent for one or more member carriers on request—an authority which AIR Conference has in fact never used in four years of operation and which according to the testimony of the Conference's responsible officials is not intended to be employed frequently, if at all. In its judgment of affirmance the Court of Appeals concluded that "the issues presented occasion no need for an opinion . . . ." (Appendix A p. 2a). *A fortiori,* the limited issues presented in the Petition occasion no need for review in this Court.

The express terms of the Railway Labor Act make clear that carriers are entitled as a matter of right to be represented by a common bargaining agent if they choose. A recited purpose of the Act is to protect the

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[4] The only judicial authority cited in the Petition is Chicago & N.W. Ry. v. United Transportation Union, 402 U.S. 570 (1971), supporting the general propositions that Section 2, First of the Railway Labor Act is the "heart" of the Act and that parallels between the National Labor Relations Act and the Railway Labor Act should be drawn "with caution," and Brotherhood of R.R. Trainmen v. Atlantic Coast Line R.R., 127 U.S. App. D.C. 298, 383 F.2d 225 (1967), *cert. denied,* 389 U.S. 1047 (1968), also cited for the latter proposition. There is no claim that the holdings of these cases are pertinent to any issue raised in the Petition. The only other decisional authority cited is a prior decision of the CAB rejecting the very same legal contentions made in the Petition. Airlines Negotiating Conference, 8 C.A.B. 354 (1947).

freedom of both carriers and employees to organize themselves for collective bargaining as they wish without interference. 45 U.S.C. § 151a and 152, Third. The bargaining representative selected pursuant to this right of self-organization may be an "organization . . . designated either by a carrier or [by a] group of carriers." 45 U.S.C. § 151, Sixth. These provisions preclude the contentions advanced in the Petition that the designation of a common bargaining agent is in itself inconsistent with the statutory scheme of the Act. (Petition pp. 8-10). Moreover, the Board found that the evidence did not support the premise on which Petitioners rely—that AIR Conference would represent the interests of "some third party" (Petition p. 9) rather than those of the individual carriers represented. (Appendix C pp. 45a-46a). In view of the right of each carrier to terminate any bargaining authority given to AIR Conference whenever the carrier concludes that its interests are not being served, this finding is beyond dispute; and the Petition disputes it by nothing more than a reiteration of the assertions found insupportable by the Board.

The Courts of Appeals have uniformly held under the National Labor Relations Act that coordination of bargaining positions among members of separate bargaining units through a common bargaining agent does not unlawfully convert separate bargaining units into a multi-employer unit or otherwise violate the duty of good faith bargaining imposed by that Act. *General Electric Co.* v. *NLRB,* 412 F.2d 512 (2d Cir. 1969); *Minnesota Mining & Mfg. Co.* v. *NLRB,* 415 F.2d 174 (8th Cir. 1969); *Standard Oil Co.* v. *NLRB,* 322 F.2d 40 (6th Cir. 1963); *see also American Radiator and Standard Sanitary Corp.* v. *NLRB,* 381 F.2d 632 (6th

Cir. 1967). These cases follow the lead of the CAB, which first considered the parallel question under Section 2, *First* of the Railway Labor Act in 1947 in approving the establishment of an airline bargaining organization indistinguishable for these purposes from AIR Conference. *Airlines Negotiating Conference,* 8 C.A.B. 354 (1947). Accordingly, there is no support for the Petition's contention that the designation of AIR Conference as a common bargaining agent would unlawfully impose multi-employer bargaining without the unions' consent. (Petition pp. 10-12). Moreover, the Board found, contrary to the thesis of the Petition, that AIR Conference does not seek to impose unconsented multi-employer bargaining (Appendix C, p. 51a), and the evidence shows that it does not even seek identical settlements for different carriers and does not now contemplate bargaining for many, if any, members. (JAE 53-55, 68, 70-74, 94-95, 124-25).

All of the Petition's arguments rest on the bare assertion that, as a common bargaining agent, AIR Conference would take a "uniform position" for all carriers it represents and would then "stand firmly by it," thereby allegedly violating the statutory duty under Section 2, *First* of the Act, 45 U.S.C. § 152, to "exert every reasonable effort to make and maintain agreements. . . ." (Petition, pp. 9, 11, 14). On the basis of this speculation, the Petition contends in effect that the mere establishment of AIR Conference with authority to act as a bargaining agent if requested is *per se* a violation of the Act. The Board found no support in the evidence for such speculation as to the manner in which AIR Conference might conduct itself in bargaining. (*See* Appendix C pp. 48a-50a, 51a-53a). And if there were any such basis, the law is clear that

except in extreme cases violations of the subjective duty imposed by Section 2, *First* are to be determined only upon analysis of particular conduct in an actual negotiation, not on a predictive, *per se* basis. *Kennedy* v. *Long Island R.R.*, 319 F.2d 366 (2d Cir.) *cert. denied*, 375 U.S. 830 (1963); *Piedmont Aviation Inc.* v. *ALPA*, 416 F.2d 633 (4th Cir. 1969), *cert. denied*, 397 U.S. 926 (1970); *see also NLRB* v. *Insurance Agents Int'l Union*, 361 U.S. 477, 508-510 (1960) (opinion of Mr. Justice Frankfurter).

The Petition appears to allege that the availability of protection against a portion of the revenues lost as a result of strikes which is provided to the 14 of the 21 AIR Conference members who are also members of the Mutual Aid Agreement furnishes a basis for concluding that AIR Conference as a negotiator would not seek to reach agreements. (Petition, pp. 13-14). The contentions that Mutual Aid permits recipients to profit from a strike, removes incentives to avoid strikes, or causes carriers to incur or prolong strikes were recently considered and rejected by the CAB in *Airlines Mutual Aid Agreement*, C.A.B. Order No. 73-2-110 (Feb. 27, 1973), *aff'd* — U.S. App. D.C. —, 502 F.2d 453 (1974), *cert. denied*, 43 USLW 3430 (1975) They were rejected once again in the present case (Appendix C pp. 48a-50a). The effect of Mutual Aid is no different when the carrier is represented by AIR Conference than when it is not.

CONCLUSION

For the foregoing reasons, the Petition for Writ of certiorari should be denied.

Respectfully submitted,

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April 16, 1975

In the Supreme Court of the United States

OCTOBER TERM, 1974

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AIR LINE DISPATCHERS' ASSOCIATION, ET AL., PETITIONERS

v.

CIVIL AERONAUTICS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE CIVIL AERONAUTICS BOARD IN OPPOSITION

OPINIONS BELOW

The court of appeals wrote no opinion. The opinions and orders of the Civil Aeronautics Board (Pet. App. 3a-8a, 115a-117a) and the initial decision of the administrative law judge (Pet. App. 9a-87a) are not yet officially reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 1a-2a) was entered on December 17, 1974. The petition for a writ of certiorari was filed on March 17, 1975. The jurisdiction of this Court is invoked under Section 1006 (f) of the Federal Aviation Act (49 U.S.C. 1486(f)) and 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Civil Aeronautics Board, in approving agreements among air carriers establishing the Airline Industrial Relations Conference, properly determined that the agreements are consistent with the Railway Labor Act, as amended, 45 U.S.C. 151, *et seq.*

STATUTES INVOLVED

The relevant sections of the Federal Aviation Act, of 1958, 72 Stat. 731, as amended, 49 U.S.C. 1301, *et seq.*, and the Railway Labor Act, 44 Stat. 577, as amended, 45 U.S.C. 151, *et seq.*, are set forth at Pet. App. 119a-122a.

STATEMENT

Pursuant to Sections 401(k)(4) and 412 of the Federal Aviation Act of 1958, 49 U.S.C. 1371(k)(4) and 1382, the Civil Aeronautics Board must assure that cooperative working arrangements among air carriers are consistent with the national labor policy and with the Railway Labor Act, as amended, 45 U.S.C. 151, *et seq.*, are not adverse to the public interest, and are otherwise in accordance with the Federal Aviation Act.

On April 6, 1971, twelve of the nation's air carriers filed for the Board's approval two agreements establishing the Airline Industrial Relations Conference ("AIR Conference") (Pet. App. 89a, 94a-109a). AIR Conference membership is open to any certificated American carrier, and members share costs in proportion to overall carrier revenues (*id.* at 15a). The principal functions of AIR Conference are to prepare and conduct coordinated collective bargaining for its members, under power of attorney, with the various unions of their employees (*id.* at 16a). Upon protests by these unions, the Board ordered a hearing to determine whether the agreements are in the public interest, and, more specifically, whether they violate the Railway Labor Act ("RLA"), adversely affect labor-management relations, violate the antitrust laws or otherwise restrain competition (*id.* at 111a-113a).

After a full hearing, the administrative law judge determined that the agreements should be approved, provided certain modifications were made. First, he held that the irrevocability of a carrier's power of attorney to AIR Conference for collective bargaining violated Section 2, First, of the RLA (45 U.S.C. 152, First) because it in effect imposed multi-employer collective bargaining on the unwilling unions (Pet. App. 34a-39a).[1] Second, he found that the imposition of liability on members for revocation of the power of attorney and independent negotiation of a contract also violated the RLA (*id.* at 72a-74a). With these provisions removed,[2] he ruled that the agreements would conform with the RLA and would be virtually identical to the agreement approved by the Board in the face of similar claims of violation of the RLA years earlier in *Airlines Negotiating Conf. Agreements*, 8 C.A.B. 354 (*id.* at 43a). AIR Conference, like its predecessor, did not impose multi-employer bargaining on any party (*id.* at 32a-33a); then, as now, an individual carrier's selection of an organization like AIR Conference as its bargaining representative was protected by Section 2, Third, of the RLA (*id.* at 44a-45a). The judge held that the coordination by the individual carriers in collective bargaining through AIR Conference was consistent with the RLA's requirement that parties exert every reasonable effort to make and keep agreements (*id.* at 28a-30a), and also determined that the interaction of AIR Con-

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[1]As originally proposed, the AIR Conference articles of association barred a carrier that had given AIR Conference a power of attorney to represent it in collective bargaining from revoking that power until the conclusion of negotiations, and made withdrawal from the organization, normally valid on ninety days' notice, ineffective if made during negotiations until ninety days after completion of the negotiations (Pet. App. 15a-16a).

[2]He also directed that the board of directors be chosen so as to give each member carrier equal representation (Pet. App. 80a).

ference and the Mutual Aid Pact (see n. 6, *infra*) would not violate the RLA (*id.* at 47a-50a).[3]

The Board adopted the decision of the administrative law judge, including provisions authorizing the Board to inspect AIR Conference's records and retaining jurisdiction to impose such further conditions as the public interest may require (*id.* at. 3a-8a).[4] After the carriers modified the agreements to conform to its decision, the Board approved them (*id.* at 115a-117a).

The court of appeals, in a *per curiam* order, affirmed the Board, holding that the "factual findings of the Board are supported by substantial evidence in the record taken as a whole, and the Board's conclusions are free from reversible legal error" (*id.* at 2a). The court also noted the Board's "recognition of its responsibility of continuing oversight of the activities of the AIR Conference to make certain that it operates within the law and in the public interest, and to act promptly in the event it does not" (*ibid.*).

ARGUMENT

The decision of the court of appeals affirming the Board is correct and presents no issue warranting review by this Court.

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[3]In addition, the judge determined that AIR Conference would not have an adverse impact on labor-management relations (Pet. App. 50a-53a), would have minimal effect on the economic balance of power between the carriers and the unions (*id.* at 54a-60a), and would not violate the antitrust laws or restrain competition (*id.* at 64a-66a).

[4]The Board modified the decision in several respects (composition of the board of directors; use of visitation power; lawfulness of irrevocable powers of attorney in multi-employer bargaining). These modifications are not at issue here.

Petitioners argue (Pet. 8, 10) that by approving AIR Conference the Board has allowed the carriers to violate their duty under Section 2, First, of the RLA (45 U.S.C. 152, First) "to exert every reasonable effort to make and maintain agreements * * *," and has forced the unions to engage in multi-employer collective bargaining. These arguments are founded on the assertion that AIR Conference is designed to seek a "united front" of carriers and does not have "the interests of * * * [the] particular carrier at heart * * *" (Pet. 9, 11).

Section 2, Third, of the RLA (45 U.S.C. 152, Third) assures carriers and employees the right to choose freely their bargaining representatives, without restriction as to who may be such a representative. Section 1, Sixth (45 U.S.C. 151, Sixth) defines "representative" to include organizations and corporations selected by "a carrier or group of carriers * * *." Thus, the right to select a bargaining representative includes the right to choose an outside organization that another party may also have chosen. While selection of a common representative facilitates coordination among the parties represented and increases the likelihood that they will take similar or identical bargaining positions, such coordination, which petitioners label a "united front" (Pet. 9), is not inconsistent with the good faith efforts to make and maintain agreements required by Section 2, First, of the RLA. The Board has so held since *Airlines Negotiating Conf. Agreements*, *supra*, as have the courts in analogous situations. *General Elec. Co.* v. *National Labor Relations Board*, 412 F. 2d 512, 516-520 (C.A. 2); *Minnesota Min. & Mfg. Co.* v. *National Labor Relations Board*, 415 F.2d 174, 177-178 (C.A. 8).

Nor does such coordination convert bargaining on a single-employer basis into compulsory multi-employer bargaining. Such multi-employer bargaining exists if the employers clearly intend to merge individual units into an overall group with a single spokesman authorized to bind all employers to a common contract with the union or unions. *Western States Regional Council* v. *National Labor Relations Board*, 398 F.2d 770, 773 (C.A.D.C.); cf. *National Labor Relations Board* v. *Truck Drivers Local Union*, 353 U.S. 87, 94-96. Where, however, as in the present case, each carrier retains individual bargaining authority and does not commit itself to be bound on a group basis, multi-employer bargaining does not occur. *Airlines Negotiating Conf. Agreements, supra*; *General Elec. Co.* v. *National Labor Relations Board, supra*; *Minnesota Min. & Mfg. Co.* v. *National Labor Relations Board, supra*.[5]

The facts found by the Board show that AIR Conference meets these standards. AIR Conference's "prior and primary fealty" is to the carrier that engaged it (Pet. App. 45a-46a). The Board also found that "[t]his allegiance takes precedence over any coordinating design of the AIR Conference * * *" (*id.* at 46a). Moreover, if any carrier is dissatisfied with the manner in which AIR Conference is bargaining on its behalf, it may at any

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[5]Petitioners' suggestion that precedent under the National Labor Relations Act is suspect in RLA cases (Pet. 12) ignores this Court's practice of referring to that Act "for assistance in construing the Railway Labor Act" (*Brotherhood of R.R. Trainmen* v. *Jacksonville Term. Co.*, 394 U.S. 369, 383), even if parallels between the two statutes are to be drawn with care. *Chicago & N.W. Ry.* v. *United Transp. Union*, 402 U.S. 570, 579, n. 11. Petitioners do not explain why precedents interpreting the National Labor Relations Act's requirement of good faith bargaining and prohibition of coerced multi-employer bargaining are not apposite here.

time revoke the agent's power of attorney and conduct the collective bargaining itself or through another representative (*ibid.*). Thus AIR Conference is structured to "conform to the needs and wishes of the carrier member for whom bargaining has been undertaken" (*ibid.*). These findings, which the court of appeals properly held to be supported by substantial evidence (*id.* at 2a), show that AIR Conference is also structured so as to conform to the RLA, and there is no reason for further review by this Court.[6]

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[6]Petitioners' contention that the Board, by approving AIR Conference and the Mutual Aid Pact, has sanctioned a violation of Section 2, First (Pet. 13), is unsound. The Pact is an inter-carrier agreement under which the member-carriers provide financial assistance to members whose operations are shut down by a strike. Petitioners' complaint about the approval of the Pact itself has already been heard and rejected. *Air Lines Pilots Ass'n Int'l* v. *Civil Aeronautics Board*, 502 F. 2d 453 (C.A.D.C.), certiorari denied *sub nom. Allied Pilots Ass'n* v. *Civil Aeronautics Board*, Nos. 74-549, 74-709, 74-710, March 17, 1975. To the extent that petitioners claim that the Pact, in conjunction with AIR Conference, gives the carriers too much power, or facilitates violation of the RLA, the Board carefully examined these contentions and found them unsupported (Pet. App. 47a-50a).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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